[fol. 201] IN UNITED STATES DISTRICT COURT

Case No. 292-T-Civil

WILBUR C. KING, JERRY W. CARTER and RICHARD A. MACK, as and Constituting the Florida Railroad and Public Utilities Commission, Plaintiffs,

vs.

THE UNITED STATES OF AMERICA, Defendant

and

INTERSTATE COMMERCE COMMISSION, Intervening Defendant

FINAL JUDGMENT—Filed July 17, 1951

This cause came on for final hearing before a Court consisting of Honorables Leon McCord, Circuit Judge, Dozier A. DeVane and George W. Whitehurst, District Judges.

Evidence was presented and arguments heard, and, for reasons stated in an Opinion filed herewith, it is considered, Ordered and Adjudged that the relief sought by plaintiffs herein be and the same is hereby denied; that plaintiffs take nothing by this suit and defendants go hence without day. The costs of this case shall be taxed by the Clerk upon an appropriate bill filed therefor against the Florida Railroad and Public Utilities Commission, plaintiff.

Done and Ordered at Jacksonville, Florida, this 16th day of July, 1951.

(S.) Leon McCord, Circuit Judge. (S.) Dozier A. DeVane, District Judge. (S.) George W. Whitehurst, District Judge.

[fol. 202] IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION FOR APPEAL—Filed September 7, 1951

Considering themselves aggrieved by the final decree and judgment of this Court entered on July 17, 1951, Wilbur C. King, Jerry W. Carter, and Richard A. Mack, as and con-

stituting the Florida Railroad and Public Utilities Commission, Plaintiffs herein, do hereby pray that an appeal be allowed to the Supreme Court of the United States from said final decree and judgment and from each and every part thereof; that citation be issued in accordance with law; that an order be made with respect to the appeal bond to be given by said Plaintiffs and that the amount of security to be fixed by the order allowing the appeal, and the material parts of the record; proceedings and papers upon which said final judgment and decree was based, duly authenticated, be sent to the Supreme Court of the United States in accordance with the rules in such case made and provided.

Respectfully submitted, (S.) Lewis W. Petteway,
Counsel for Plaintiffs.

[fol. 203] In United States District Court

[Title omitted]

Assignment of Errors and Prayer for Reversal—Filed September 7, 1951

Wilbur C. King, Jerry W. Carter, and Richard A. Mack, as and constituting the Florida Railroad and Public Utilities Commission, Plaintiffs herein, in connection with their appeal to the Supreme Court of the United States hereby file the following assignment of errors upon which they will rely in their prosecution of said appeal from the final judgment of the District Court entered on July 17, 1951.

The District Court erred:

1. In finding and holding that the Interstate Commerce Commission had authority, in this case, to enter an order requiring the railroads to increase Florida intrastate freight rates generally to enable said carriers to meet deficits incurred from their passenger operations;

[fol. 204] 2. In finding and holding that intrastate shippers and receivers of freight can be required lawfully to pay excessive and unreasonably high freight rates in order that the railroads may be able to recoup losses sustained through the operation of their passenger service;

3. In finding and holding that the order of the Interstate Commerce Commission, in this case, is based on adequate findings supported by evidence;

4. In concluding that the order of the Interstate Commerce Commission should be sustained; and

5. In denying the relief sought by plaintiffs in this proceeding.

Wherefore, Plaintiffs Wilbur C. King, Jerry W. Carter, and Richard A. Mack, as and constituting the Florida Railroad and Public Utilities Commission, pray that the final judgment of the District Court be reversed, and for such other relief as the Court may deem fit and proper.

(S.) Lewis W. Petteway, Counsel for Plaintiffs.

[fol. 205] IN THE UNITED STATES DISTRICT COURT

[Title omitted]

ORDER ALLOWING APPEAL—Filed September 7, 1951

Wilbur C. King, Jerry W. Carter, and Richard A. Mack, as and constituting the Florida Railroad and Public Utilities Commission, Plaintiffs herein, having made and filed their petition praying for an appeal to the Supreme Court of the United States from the final judgment and decree of this Court in this cause entered on July 17, 1951, and from each and every part thereof, and having presented their assignment of errors and prayer for reversal and their statement as to the jurisdiction of the Supreme Court of the United States on appeal, pursuant to the statutes and rules of the Supreme Court of the United States in such cases made and provided;

Now therefore, it is hereby ordered that said appeal be and the same is hereby allowed as prayed for.

[fols. 206-206a] It is further ordered that the amount of the appeal bond be and the same is hereby fixed in the sum of $1,000.00 with good and sufficient surety, and shall be conditioned as may be required by law.

It is further ordered that citation shall issue in accordance with law.

Done and ordered this 7th day of September, 1951.

(S.) Dozier A. DeVane, District Judge.

[fols. 206b-206e] Citation in usual form showing service on George Earl Hoffman omitted in printing.

[fols. 206f-206h] Supplemental Citation in usual form showing service on James A. Bistline and Frank W. Gwathmey omitted in printing.

[fol. 207] IN UNITED STATES DISTRICT COURT

[Title omitted]

Filed September 14, 1951

To the Clerk of the above named Court:

You will please prepare a transcript of the record in the above entitled cause to be transmitted to the Clerk of the Supreme Court of the United States and include in said transcript the following:

1. Complaint.
2. Answer of The United States of America.
3. Answer of the Interstate Commerce Commission.
4. Answer of Atlantic Coast Line Railroad Company and Other Railroads Operating in Florida.
5. Order Designating Judges to Compose Three-Judge Court.
6. Transcript of the Final Hearing on May 1, 1951 before the Three-Judge Court, including such Evidence as was Received at said Hearing by said Court but excluding the Argument of Counsel.

[fol. 208] As a part of such evidence include:

(a). The original certified copy of the transcript of the stenographer's notes of the hearing held June

28, 29 and [redacted] and July 1 and 2, 1949 in Docket No. 30140 of the Interstate Commerce Commission,

(b) The original certified copies of Exhibits 1 to 171, inclusive, in said Hearing in said Docket No. 30140, and

(c) The original certified copy of the transcript of the stenographer's notes of the oral argument on April 11, 1950 in said Docket No. 30140

7. Opinion Delivered by Three-Judge Court.
8. Final Judgment of Three-Judge Court.
9. Petition for Appeal.
10. Assignment of Errors and Prayer for Reversal.
11. Jurisdictional Statement.
12. Order Allowing Appeal.
13. Citation on Appeal.
14. Statement Directing Attention to Paragraph 3 of Rule 12 of the Rules of the Supreme Court of the United States.
15. Acceptance of Service filed September 12, 1951, by the Defendant-Appellee, The United States of America, by the United States Attorney, Northern District of Florida, of copies of Petition for Appeal and other Papers Described in said Acceptance of Service.

[fol. 209] 16. Acceptance of Service by the Defendant-Appellee, The United States of America, by the Attorney General of the United States, of copies of Petition for Appeal and other Papers Described in said Acceptance of Service.

17. Acceptance of Service by Intervening Defendant-Appellee, Interstate Commerce Commission, of copies of Petition for Appeal and other Papers Described in said Acceptance of Service.

18. Supplemental Citation on Appeal to the Intervening Railroad Defendants-Appellees as follows:

Atlantic Coast Line Railroad Company;
Atlanta & Saint Andrews Bay Railway Company;
Florida East Coast Railway Company (Scott M. Loftin and John W. Martin, Trustees);
Georgia & Florida Railroad (Alfred W. Jones, Receiver);
Georgia Southern and Florida Railway Company;

Louisville and Nashville Railroad Company;
St. Louis-San Francisco Railway Company;
Seaboard Air Line Railroad Company;
Southern Railway Company.

19. Supplemental Statements Directing Attention of said Intervening Railroad Defendants-Appellees to Paragraph 3 of Rule 12 of the aforesaid Rules.

20. Acceptance of Service by said Intervening Railroad Defendants-Appellees of copies of Petition for Appeal and other Papers Described in said Acceptance of Service.

21. This Praecipe, and Proof of Service of copies thereof on counsel for the above named Defendant-Appellee and Intervening Defendants-Appellees.

22. Motion to Have Certain Original Records Transmitted to the Clerk of the Supreme Court.

[fol. 210] 23. Order that Certain Original Records be forwarded to the Supreme Court.

(S.) Lewis W. Petteway, Attorney for Plaintiffs-Appellants.

September 14, 1951.

[fol. 211] IN UNITED STATES DISTRICT COURT

[Title omitted]

MOTION TO HAVE CERTAIN ORIGINAL RECORDS IN THE DISTRICT COURT TRANSMITTED TO THE CLERK OF THE SUPREME COURT OF THE UNITED STATES—Filed September 14, 1951.

Plaintiffs-appellants in the above entitled cause petition the Court, pursuant to Rule 10, paragraph (4) of the Rules of the Supreme Court of the United States, to authorize and instruct the Clerk of this District Court to transmit as a part of the record on appeal to be filed in the Supreme Court of the United States, the documents hereinafter described:

1. The original certified copy of the transcript of the stenographer's notes of the hearing held June 28, 29

and 30 and July 1 and 2, 1949 in Docket No. 30140 of the Interstate Commerce Commission,

2. The original certified copies of Exhibits 1 to 171, inclusive, in said hearing in said Docket No. 30140, and

3. The original certified copy of the transcript of the stenographer's notes of the oral argument on April 11, 1950 in said Docket No. 30140,

all of which said documents were received in evidence on May 1, 1951 upon the final hearing of the above entitled cause.

[fol. 212] As grounds for this petition plaintiffs-appellants represent that there are only originals of said documents which must be transmitted to the Supreme Court; that a great deal of expense and work would be required to prepare copies thereof for the transcript of record on appeal, and that such expense and work can be obviated by the granting of this petition.

(S.) Lewis W. Petteway, Attorney for Plaintiffs-Appellants.

September 13, 1951.

[fol. 213] In United States District Court

[Title omitted]

Order That Certain Original Records be Forwarded to Supreme Court—Filed September 14, 1951

In accordance with the provisions of the praecipe herein, and pursuant to the motion of plaintiffs-appellants to transmit the documents hereinafter described as a part of the record on appeal of the above entitled cause to the Supreme Court of the United States:

1. The original certified copy of the transcript of the stenographer's notes of the hearing held June 28, 29 and 30 and July 1 and 2, 1949 in Docket No. 30140 of the Interstate Commerce Commission,

2. The original certified copies of Exhibits 1 to 171, inclusive, in said hearing in said Docket No. 30140, and

3. The original certified copy of the transcript of the stenographer's notes of the oral argument on April 11, 1950 in said Docket No. 30140.

It is hereby ordered, that said documents received in evidence in the District Court on May 1, 1951 upon the final [fol. 214] hearing of this cause may be forwarded, in lieu of copies of said documents, to the Clerk of the Supreme Court of the United States as a part of the transcript of the record on the appeal herein.

(S.) Dozier A. DeVane, District Judge.

September 14, 1951.

[fol. 215] In United States District Court

[Title omitted]

Motion for Extension of Time for Docketing and Filing of Record—Filed October 16, 1951

Comes now Wilbur C. King, Jerry W. Carter, and Richard A. Mack, as and constituting the Florida Railroad and Public Utilities Commission, plaintiffs-appellants herein, and respectfully move the court for an extension of time for docketing and filing transcript of record in this proceeding with the Clerk of the Supreme Court of the United States, and as grounds for said motion state that said transcript of record is quite lengthy and its preparation cannot now be completed before the time for filing the same has expired, that is to wit: on Wednesday, October 17, 1951, particularly in view of the fact that counsel for plaintiffs-appellants herein has been unable, because of illness and resulting [fol. 216] absence from the office, to supervise the preparation of said transcript.

Wherefore, plaintiffs-appellants move the Court to extend time for docketing and filing said transcript of record from October 17, 1951, to and including November 19, 1951.

Respectfully submitted, (S.) Lewis W. Petteway, Attorney for Plaintiffs-Appellants.

[fol. 217] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER EXTENDING TIME FOR DOCKETING AND FILING TRANSCRIPT OF RECORD—Filed October 16, 1951

This cause coming on this day to be heard upon the motion of plaintiffs-appellants for extension of time for docketing and filing transcript of record herein with the Clerk of the Supreme Court of the United States and the Court being fully advised in the premises, it is, therefore, in consideration thereof ordered that the time for docketing the appeal and filing transcript of record with the Clerk of the Supreme Court of the United States be and the same is hereby extended to and including November 19, 1951.

(S.) Dozier A. DeVane, District Judge.

[fol. 218] IN UNITED STATES DISTRICT COURT

[Title omitted]

SUPPLEMENTAL PRAECIPE—October 19, 1951

To the Clerk of the above named Court:

You will please include in the transcript of record in the above entitled cause to be transmitted to the Clerk of the Supreme Court of the United States the following additional pleadings which have been filed subsequent to the filing of the original Praecipe herein on September 14, 1951 as follows:

1. Motion to Affirm filed by Intervening Defendants, Atlantic Coast Line Railroad Company and other railroads.

2. Motion to Affirm filed by the United States of America and the Interstate Commerce Commission.

3. Motion for Extension of Time for Docketing and Filing Record.

[fols.219-219a] 4. Order Extending Time for Docketing and Filing Record.

5. Supplemental Praecipe and Proof of Service of copies thereof.

(S.) Lewis W. Petteway, Attorney for Plaintiffs-Appellants.

[fol. 219b] Clerk's Certificate to foregoing transcript omitted in printing.

[fols. 220-221] Secretary's certificate (omitted in printing).

[fol. 222] BEFORE THE INTERSTATE COMMERCE COMMISSION

Ocean Room,
Sheraton Plaza Hotel,
Daytona Beach, Florida,
Tuesday, June 28, 1949.

Transcript of Hearing

Met pursuant to notice at 9:30 o'clock a.m.

Before William J. Patterson, Commissioner; G. H. Mattingly, Examiner

APPEARANCES

Frank W. Gwathmey, 110 Shoreham Building, Washington, D. C., appearing for respondent railroads.

James A. Bistline, Southern Railway Building, Washington, D. C., appearing for Southern Railway System and Georgia Southern and Florida Railway Company, Respondents.

E. C. Hicks, Jr., Atlantic Coast Line Railroad, Wilmington, N. C., appearing for the Atlantic Coast Line Railroad, Respondent.

M. W. Wells, P. O. Box 633, Orlando, Florida, appearing for Florida Citrus Commission and Growers & Shippers League of Florida, Protestants.

F. C. Hillyer, 227 West Forsyth Street, Jacksonville, [fol. 223] Florida, appearing for East Florida Pulp and Paper Mills, Florida Millwork Association, Florida Rate

Conference, Jacksonville Traffic Bureau and United States Sugar Corporation, Protestants.

F. E. Harrison, Jr., P. O. Box 840, Tallahassee, Florida, appearing for the Board of Commissioners of State Institutions, State Road Department, Dixie Lime Products Company, Dolomite Products, Inc., Protestants.

Arthur L. Winn, Jr., Investment Building, Washington 5, D. C., appearing for International Paper Company and St. Regis Paper Company, Protestants.

Fred Pettijohn, Tallahassee, Florida, appearing for the Florida Railroad and the Public Utilities Commission, Protestants.

Fred McMullen, Tallahassee, Florida, appearing for Florida Railroad and Public Utilities Commission, Protestants.

Lewis Petteway, Tallahassee, Florida, appearing for Florida Railroad and Public Utilities Commission, State of Florida and representing the Attorney General of the State of Florida, Protestants.

W. H. Backer, 122 East 42nd Street, New York 17, N. Y., appearing on behalf of Rayonier Inc., Protestants.

R. J. Healey, Fort Lauderdale, Florida, Broward County Traffic Association and Florida Rate Conference, Protestants.

B. H. Overton, Traffic Bureau, Chamber of Commerce, St. Petersburg, Florida, appearing for the Florida Rate [fols. 224-225] Conference, Traffic Bureau, Chamber of Commerce of St. Petersburg, Florida, Protestants.

T. C. Maurer, 227 West Forsyth Street, Jacksonville, Florida, appearing for Jacksonville Traffic Bureau, National Container Corporation, Florida Lumber and Millwork Association and Citrus Processors Association, Protestants.

W. W. Balkcom, Tampa, Florida, appearing for the Tampa Traffic Association, Protestants.

A. M. Ribe, 912 South Twenty-first Street, Birmingham, Alabama, appearing for Newport Industries, Inc., Protestants.

Mr. M. D. Malmend, 220 East Forty-second Street, New York 17, N. Y., appearing for the Hudson Pulp & Paper Corporation, Protestants.

D. S. Browder, 60 East Forty-second Street, New York

17, N. Y., appearing for the Pennsylvania-Dixie Cement Corporation, Protestants.

G. R. Gordon, 38 South Dearborn Street, Chicago, Illinois, appearing for the Container Corporation of America, Protestants.

Thomas E. Grady, 827 DuPont Building, Miami, Florida, appearing for Greater Miami Traffic Association, Hector Supply Company and Florida Rate Conference, Protestants.

[fol. 226] Proceedings

Comm. Patterson: The Interstate Commerce Commission has assigned for hearing at this time and place Docket No. 30140, Increases in Florida Intrastate Rates. This is an investigation, instituted upon a petition of the rail carriers operating to, from, and within the State of Florida, with respect to the rates and charges for the intrastate transportation of property in Florida which are held to their present level by the refusal of the Florida Railroad & Public Utilities Commission to permit increases thereof, corresponding to the increases approved by this Commission on interstate traffic in Ex Parte 148, 162 and 166. The purpose of this proceeding is to determine whether the intrastate rates and charges referred to cause any undue or unreasonable advantage, preference or prejudice as between persons or localities in intrastate commerce, on the one hand, and interstate or foreign commerce, on the other hand, or any undue, unreasonable or unjust discrimination against interstate or foreign commerce.

The parties will please announce their appearances for the record,—respondents first.

Mr. Gwathmey: Frank W. Gwathmey, 110 Shoreham Building, Washington 5, D. C., appearing on behalf of the respondent railroads generally.

Mr. Bistline: James A. Bistline, Southern Railway Build-
[fol. 227] ing, Washington, D. C., appearing for the Southern Railway System and the Georgia Southern and Florida Railway Company.

Mr. Hicks: E. C. Hicks, Jr., Atlantic Coast Line Railroad, Wilmington, N. C., appearing for the Atlantic Coast Line Railroad.

Comm. Patterson: Are there any others appearing for the respondents? Other appearances?

Mr. Petteway: Mr. Fred Pettijohn, Fred McMullen and Lewis Petteway, all of Tallahassee, Florida, appearing for the Florida Railroad and Public Utilities Commission, and Lewis Petteway appearing also for the State of Florida and for Richard Irwin, Attorney General of the State of Florida.

Mr. Hillyer: F. C. Hillyer, 227 West Forsyth Street, Jacksonville, Florida, appearing for East Florida Pulp and Paper Mills, Florida Millwork Association, Florida Rate Conference and Jacksonville Traffic Bureau and the United States Sugar Corporation.

Mr. Wells: M. W. Wells, P. O. Box 633, Orlando, Florida, appearing for the Florida Citrus Commission and Growers and Shippers League of Florida.

Mr. Harrison, Jr.: Frank E. Harrison, Jr., Tallahassee, Florida, appearing for the Board of Commissioners of State Institutions, State Road Department, Dixie-Lime Products Company and Dolomite Products, Inc., of Ocala.

Mr. Winn: Arthur L. Winn, Jr., Investment Building, [fol. 228] Washington, 5, D. C., appearing for International Paper Company and St. Regis Paper Company.

Mr. Overton: B. H. Overton, Traffic Bureau, Chamber of Commerce, St. Petersburg, Florida, appearing for the Florida Rate Conference and the Traffic Bureau of St. Petersburg.

Mr. Grady: Thomas E. Grady, 827 DuPont Building, Miami, Florida, Greater Miami Traffic Association, Hector Supply Company and Florida Rate Conference. I am a registered practitioner.

Mr. Maurer: T. C. Maurer, 227 West Forsyth Street, Jacksonville, Florida, appearing for Jacksonville Traffic Bureau, National Container Corporation, Florida Lumber and Millwork Association and Citrus Processors Association.

Mr. Balkcom: W. W. Balkcom, appearing for the Tampa Traffic Association, Tampa, Florida.

Mr. Gordon: G. R. Gordon, 38 South Dearborn Street, Chicago 3, Illinois, appearing for the Container Corporation of America.

Mr. Browder: D. S. Browder, 60 East Forty-second Street, New York 17, N. Y., appearing on behalf of the Pennsylvania-Dixie Cement Corporation.

Mr. Malmend: M. D. Malmend, 220 East Forty-second

Street, New York 17, N. Y., Hudson Pulp and Paper Corporation.

Mr. Healey: R. J. Healey, Fort Lauderdale, Florida, [fol. 229] appearing for the Broward County Traffic Association and Florida Rate Conference.

Mr. Ribe: A. M. Ribe, 912 South Twenty-first Street, Birmingham, Alabama, appearing for the Newport Industries, Pensacola, Florida. I am a registered practitioner.

Comm. Patterson: Any others?

Mr. Backer: W. H. Backer, 122 East Forty-second Street, New York 17, N. Y., appearing for Rayonier Inc., Fernandina, Florida.

Comm. Patterson: Are there any other appearances? You gentlemen that haven't already done so, if you will file appearance blanks.

The respondents may proceed.

COLLOQUY

Mr. Petteway: Mr. Commissioner, on behalf of the Florida Commission, may I make a motion just before they proceed? I move you that all matters relating to increased freight rates, 1948, that is Ex Parte 168, be excluded from this record. That is similar to the request made by the Tennessee Commission, which was granted, and in view of the fact that the Ex Parte 128 has not been presented to the Florida Commission, we make that request.

Mr. Gwathmey: We understand, Mr. Commissioner, that Ex Parte 128 increases in no way are involved in this present prelude proceeding.

Comm. Patterson: Well, the Commission haven't acted on [fol. 230] 168 yet.

Mr. Gwathmey: The part of the investigation instituted by the Commission in this case and the carriers' petition for the investigation do not include 168 increases, as I understand.

Comm. Patterson: Well, the notice of hearing didn't include No. 168.

Mr. Gwathmey: Correct.

Comm. Patterson: So 168 just isn't involved in this proceeding.

Mr. Petteway: There is no objection to my motion, I take it?

Comm. Patterson: Proceed, Mr. Gwathmey:

Mr. Gwathmey: Mr. Commissioner and Mr. Examiner, the carriers printed petition, dated December 3, 1948, in response to which the Interstate Commerce Commission instituted this investigation, has attached to it as an appendix copies of the several orders of the Florida Railroad Commission which are here involved. The orders are quite long and complicated and it seemed to us unnecessary to have them copied for the purpose of filing them as exhibits, when they are already a part of this petition. Therefore, with Your Honors' approval, I will ask that the petition dated December 3, 1948, be considered as a part of the record, not as evidence of any facts that are set out in the [fol. 231] petition just merely for the purpose of establishing that the petition was filed and that the orders of the Florida State Commission about which we are here complaining are set out in that petition and we want them considered as a part of this record.

Comm. Patterson: If there is no objection, it will be done.

Mr. Petteway: The only objection we've got to that is that they have not included all the Florida orders that have to do with this subject matter, Order 1466-A, B and C, and they have only included C and we would have no objection if they would include all of them.

Comm. Patterson: There is no objection to your putting in those that haven't been included if you care to.

Mr. Gwathmey: The C, as I understand it, is the one now in effect. On the date of June 17, 1949, the Florida Railroad and Public Utilities Commission issued its order Number 1547 and Docket No. 2691 wherein the Commission grants a petition or application filed by the carriers and establishes a revised and generally reduced scale of rates on sand, gravel and related articles commonly referred to as road aggregates. The scale that has been allowed by the Florida Commission is not in all respects in precisely the state which the carriers would like to have it, but be that as it may, the order has been entered in response to [fol. 232] the carriers' petition and this scale is the same

scale which has been agreed upon, as I understand, by the shippers and the railroads throughout the south generally, and it is the railroads' purpose to make it effective both intrastate and interstate throughout the South.

Under those conditions, we no*t* ask that the order of investigation in this case be amended so as to exclude commodities to which I have just referred from the investigation.

Mr. Petteway: Mr. Gwathmey, we have no objections to that being excluded, but we want to reserve the right to cross examine his witnesses with reference to the reason why they are excluded. Now, I don't anticipate that we'd be, if this is granted at this time, that we would be cut out of that cross examination.

Mr. Gwathmey: We do not intend to put in any evidence in this record in respect to rates on road aggregates.

Mr. Patterson: There being no objection, this order will be excluded subject to any cross examination that may be necessary.

Mr. Gwathmey: Shall I proceed?

Comm. Patterson: Proceed.

Mr. Gwathmey: On behalf of the Florida East Coast Railway Company, I now wish to say that I have been instructed to ask that the rates of that Company on fertilizers [fol. 233] and fertilizer materials as applicable between points on its line be excluded from this investigation since the Florida East Coast Railway is not seeking any increases in those rates.

I may state in explanation that the rates of the Florida East Coast Railway on fertilizer and fertilizer materials are now on a higher basis than the rates applicable on other railroads in Florida. The Florida East Coast Railway feels that a further increase in its rates on fertilizer and fertilizer materials would cause a diversion of the traffic from the railroad and it does not desire to have those rates increased as a result of the order in this proceeding.

Comm. Patterson: If there is no objection, it will be done.

Mr. Wells: May I inquire whether the order of the Florida East Coast Railway also applies to any origination or termination on Florida East Coast?

Mr. Gwathmey: Between points on the Florida East Coast Railway only.

Mr. Petteway: We take the same position on that we do to road aggregates.

Comm. Patterson: You may proceed.

E. B. Rush was sworn and testified as follows:

[fol. 234] Direct examinatoin.

By Mr. Gwathmey:

Q. Please state your name, residence and railroad position?

A. E. B. Rush; General Superintendent, Southern Division, Atlantic Coast Line Railroad Company, Jacksonville, Florida. Residence, 2735 St. Johns Avenue, Apartment 4, Jacksonville, Florida.

Q. Over what portion of the Atlantic Coast Line system do you have jurisdiction?

A. The entire State of Florida, the line extending from Savannah, Georgia, to Montgomery, Alabama, via Waycross; the line, Jessup to Jacksonville; Folkston to Waycross; Brunswick to Albany via Waycross; Albany to Thomasville; Dupont to High Springs; Climax to Chattahoochee; Abbeville, Luverne and Elba Branches in Alabama.

Q. What is the nature of your duties?

A. I have jurisdiction and am responsible for all operating matters on the Southern Division.

Q. Outline briefly your experience in railroad transportation matters?

A. I entered the service of the Atlantic Coast Line Railroad on May 1, 1899, and positions held in the Transportation Department have been as follows: Telegraph operator, train dispatcher, chief train dispatcher, terminal trainmaster, trainmaster, superintendent, superintendent of [fol. 235] transportation, general superintendent. I was appointed Superintendent of Transportation, Southern Division, Atlantic Coast Line on July 1, 1940 and served until April 28, 1949, at which time I was appointed General Superintendent of the same division. During my railroad career I have had experience with every phase of the Trans-

portation Department, from a local, district and division standpoint.

Q. What is the total mileage of the Atlantic Coast Line System and how much of that mileage is located in the State of Florida?

A. The system mileage is 5,525.82, of which 1,914.71 is located in Florida.

Q. In what states other than Florida does the Coast Line operate?

A. Virginia, North Carolina, South Carolina, Georgia, and Alabama.

Q. From the standpoint of the amount of service and the expense thereof, how does the transportation of intrastate freight traffic within Florida compare, generally speaking, with the transportation of interstate traffic moving between Florida and other states?

A. I have found in my experience that the handling of intrastate traffic within the State of Florida, is far less favorable than the handling of interstate.

Mr. Petteway: May I ask him one question before he [fol. 236] proceeds with that? I don't believe he has testified concerning his knowledge of transportation conditions in the other states.

Mr. Gwathway: I didn't ask him anything about that. I asked him transportation between Florida and other states. Does that satisfy you?

Mr. Petteway: Yes.

By Mr. Gwathmey:

Q. Did you answer the question, Mr. Rush?

A. I found in my experience that the handling of intrastate traffic within the State of Florida, is far less favorable than the handling of interstate traffic.

Q. Do the same trains ordinarily handle interstate and intrastate traffic, the two kinds of traffic to that extent receiving the same service?

A. Yes, sir.

Q. Is the preponderance of the intrastate traffic handled in local or through trains, and how does it compare in this respect with interstate traffic; and in answering, can you give some typical illustrations?

A. Generally speaking, the majority of interstate cars are handled in through freight trains and the majority of intrastate cars are handled on local freight trains. Our local freight service is far more expensive to us due to the crews receiving higher wages, and also the amount of over-[fol. 237] time earned by these crews as compared with that earned by through freight crews.

We selected two or three segments of the line in Florida to show the percentage of intrastate cars handled on local freights and percentage of interstate cars handled on through freights. Local Freight Train 533, operating between Jacksonville and Sanford, during the period March 13 to 21, inclusive, 1949, handled 127 intrastate cars and 51 interstate cars. The percentage of intrastate cars was 71.3 and the percentage of interstate cars was 28.7. Through freight train 209, operating between the same points, during the same period, handled 55 intrastate and 106 interstate cars. The percentage of intrastate cars being 34.1 and the percentage of interstate cars was 65.9.

Between Tampa and Sarasota, local freight train 565, during period March 13 to 21, inclusive, 1949, handled 175 intrastate cars and only four interstate cars. The percentage of intrastate traffic being 97.8 and interstate traffic 2.2.

Between High Springs and Tampa our through freight train 219, during period March 13 to 21, inclusive, 1949, handled five intrastate cars and 146 interstate cars, or 96.7 per cent of the traffic handled was interstate and only 3.3 per cent, intrastate. Northbound, between Tampa and High Springs, during this same period, our through freight [fol. 238] train 220 handled eight intrastate cars and 307 interstate cars, the percentage being 97.6 interstate and 2.4 intrastate.

You can see from the above that the preponderance of intrastate traffic moves in local freight service.

Q. Mr. Rush, in your discussion of freight train service in Florida, are you dealing with the trains that handle the ordinary run of freight, rather than these especially set up trains for handling of perishable fruits and vegetables?

A. The ordinary trains that we operate from all classes of traffic.

By Comm. Patterson:

Q. Is that as distinguished from citrus fruit trains?

A. These local freights are separate from what we call perishable pick up freight trains and solid perishable.

Q. Do I understand perishable citrus fruit for instance is picked up by special trains as distinguished from ordinary way freight?

A. The majority, yes. Local freights do handle a certain amount of it if it is ready when they pass.

Mr. Gwathmey: May I state, Mr. Commissioner, as you probably know, there is practically no intrastate movement in Florida of citrus fruit and vegetables. Almost all of it goes outside of the state and it really is not involved in this proceeding.

By Mr. Gwathmey:

Q. Mr. Rush, from the standpoint of expense, how does [fol. 239] local freight train operation compare with through freight train operation?

A. Our local freight operations are more expensive to us than our through freight due to the fact that the wages paid the crew of a local freight are higher than those paid the crew of a through freight and, in addition, local freight crews remain on duty a much longer time than do the through freight crews. It is seldom that we operate a local freight without paying overtime. As an example, the crew of through freight train 209, between Jacksonville and Sanford, March 15, 1949, consumed five hours and thirty minutes to make the run, whereas the local freight train 533, of the same day, covering the same distance, consumed thirteen hours and ten minutes.

On March 14, through freight train 209, between Jacksonville and Sanford, consumed five hours and two minutes, and local freight train 533, fourteen hours and forty minutes. The wages of a through freight crew for a minimum day are $58.16. The wages for a local freight crew for a minimum day are $60.50. Both of these figures are based upon the train being handled with a p-5 class locomotive. That is, Pacific Class.

By Commissioner Patterson:

Q. You are talking now about the minimum crews as well as the days?

A. Minimum crews and minimum days, yes.

By Mr. Gwathmey:

Q. Does the Coast Line have a substantial amount of [fol. 240] branch line mileage in Florida, and how does Florida compare in this respect with other states in which the Company operates?

A. The Coast Line does have considerable branch line trackage in the State of Florida. We have 961.36 miles of main line trackage in Florida, and 953.35 miles of branch line trackage. In other words, 49.8 per cent of the trackage owned by the Atlantic Coast Line within the State of Florida consists of branch lines. For the system as a whole, the figures are 3285.14 miles of main line and 2240.68 miles for branch line. This represents a percentage of 59.5 main line and 40.5 branch line. Exclusive of the State of Florida, the percentage is 64.3 main line and 35.7 branch line.

Q. Is the traffic, other than perishable fruits and vegetables, which is handled on the branch lines in Florida principally intrastate or interstate traffic?

A. The majority of the traffic handled on the branch lines of the Atlantic Coast Line in Florida, exclusive of perishable traffic, is intrastate traffic. As an example, Train 544, local freight operating on the Palatka Branch, between Palatka and Rochelle, handled 133 intrastate cars and eight interstate cars during the period March 13 to 21, inclusive, 1949, or 94.3 per cent of the cars handled consisted of intrastate traffic.

Local freight train 545, operating on the Palatka Branch [fol. 241] between Palatka and Rochelle, during the same period, handled 61 intrastate cars and only one interstate car. The percentage of intrastate cars handled by this train was 98.4.

I have cited just one example to show that on our branch lines we handle a far greater proportion of intrastate cars than we do interstate.

Q. Is this branch line traffic handled largely in local train service?

A. Yes, it is.

Q. Is the branchline service more expensive to operate than the main line service and, if so, why?

A. The branch line service is more expensive than the main line operation. This is due to the fact that practically all branch line service is local freight service. These crews remain on duty a much longer time, in view of the fact that such trains work practically every station on the branch, and this costs us considerable in overtime.

Q. Mr. Rush, in view of what you have said, what is your opinion as to the expense of conducting railroad transportation in general in the Florida Peninsula, as contrasted with the expense of such transportation on other portions of the Coast Line's system?

A. Our operations within the State of Florida are more expensive than elsewhere on the system due to the fact that such a large per cent of our trackage down here consists of [fol. 242] branch line —. I have shown a few examples which indicate the extent that our branch line trains handle intrastate traffic and why this service is more expensive to us. The same general percentage will hold good on practically any branch line operated in Florida.

Mr. Gwathmey: The Witness is available for cross examination.

Cross-examination.

By Mr. Petteway:

Q. Mr. Rush, the mileage operated in Florida that you testified about a moment ago, how will that be affected by the withdrawal of trains 39 and 40 which were authorized to be withdrawn last week by the Florida Commission?

A. It will not reduce the track mileage; it will reduce the passenger mileage.

Q. The passenger mileage?

A. Yes.

By Comm. Patterson:

Q. This train 39 and 40, they are passenger trains and not freight?

A. Yes, sir.

By Mr. Petteway:

Q. What determines whether intrastate traffic moves in a local or through train?

A. The local freights are run for the purpose of picking up that class of traffic. Any kind of traffic that is ready. Invariably the larger percentage moves in local freights, as [fol. 243] related in the testimony which I gave you.

Q. As a matter of fact, it is managerial practice that you can have complete control over?

A. Not always.

Q. You have substantial control over the situations of that kind, do you not?

A. They usually set up our schedules to suit the movement of traffic to the best advantage of the shippers, as well as to the railroad.

Mr. Petteway: That's all I have.

By Mr. Pettijohn:

Q. Mr. Rush, where did you arrive at your branch line and main line mileage within the State of Florida?

A. From our operating time table.

Q. You classified it, did you?

A. Yes, sir, our management did, yes, sir.

Q. I would like to hand you the sworn report of the Atlantic Coast Line and Florida Railroad Commission as the number of miles, main line track, on the Atlantic Coast Line. It is exclusive of subsidiaries. And ask you what the mileage is?

A. Main line, this shows 693.92.

Q. Branch line. What does the main line show?

A. 1,824.

Q. How many miles,—second line—to main track?

A. 129.61.

[fol. 244] Q. They do not agree with the figures quoted by you, do they?

A. I can't substantiate these figures, sir, if is the first time I have ever seen them. Mine were taken from the operating time table.

Q. I will ask you if that is not a sworn report by the Comptroller of the Atlantic Coast Line Railroad Company?

A. It so reads, sir, but I can't testify to it.

Mr. Gwathmey: May I ask a question? Mr. Pettijohn are those reports to the Florida Commission with respect to branch line and main line mileage made by the carriers pursuant to any formula or rule that is laid down by the Florida Commission?

Mr. Pettijohn: No, it is not.

Mr. Gwathmey: Do you know on what basis the distinction is drawon on this record?

Mr. Pettijohn: I do not. All I know, is it is a sworn statement of the carrier in which they classify branch lines and main line track.

Mr. Gwathmey: There is no fixed rule or formula which you could use to absolutely determine branch line and main line track.

Mr. Pettijohn: I think it is very easily measured.

Comm. Patterson: Someone ought to be able to measure that mileage, at least the aggregate mileage.

[fol. 245] By Mr. Pettijohn:

Q. You referred to train 533 between Jacksonville and Sanford and the number of interstate and intrastate cars. During the shipping season of perishables, is it not a fact that train 533 sets off empty cars for loading?

A. Yes.

Q. And there would be very few empty cars for loading interstate cars during the period you mentioned, March 13 to March 21, set aside for March?

A. Local freight would set off any class of equipment which were needed by the shippers, whether it be for intra or interstate shipments. They would find that those local freights distributed the empties for loading of traffic to a greater extent than the through freights.

Q. Well, that is a matter of management and the dispatcher tells the conductors, trainmasters, what cars he wants to move on what trains?

A. Yes.

Q. And it is entirely up to the railroad whether local cars are on one train or through cars are on the train?

A. Yes.

Q. Now, do I understand that in the interstate cars mentioned by you on trains 533 and so forth, that there are no perishable cars on those trains?

A. That I can't give you because I didn't make an analy-
[fol. 246] sis. I grouped the cars as between intra- and interstate. It is a fact that they would handle perishable if offered, whether inter- or intra-state.

Q. Do you not have certain branch lines in the State of Florida on which your total traffic is practically entirely perishables and fertilizers?

A. Yes, but I can't give you the figures because I didn't make that specific analysis.

Q. How did you classify a car of lumber, we will say, moving from Hosford through Chattahoochee over to Dupont and down? Do you classify that as in interstate or intrastate movement?

A. It is my understanding if it moves out of the State of Florida it comes within the interstate movement.

Q. Well, how did you classify it on the cars that you separated between interstate and intrastate?

A. The trains which I mentioned did move interstate. They were all within the State of Florida.

Q. Didn't they carry any cars that moved from out of the state in there or vice-versa?

A. They carried cars interstate and that was shown in my statement. So many interstate and so many intrastate.

Q. How are most of the refrigerator cars that are set out southbound for northbound loading handled, in an interstate or intrastate train?

A. The refrigerators originate interstate, but after they
[fol. 247] reach Florida, we class them as intrastate in the empty movement in placing or for loading and most of those are spotted by empty,—placed empty, rather.

Q. Then you classify them, if I understand, as an intrastate car moving south of Jacksonville for loading. But you classify them as an interstate car northbound after being loaded?

A. That's right. We don't know where they are going when we place them.

Q. You do know that 99.9 percent of refrigerator cars moving southbound, move in interstate commerce northbound?

A. The majority moves interstate. There is very little intrastate perishable traffic.

Q. Did you have ten refrigerator cars loaded with perishables moving south in the year 1948?

A. I question that we did, although I am not in position to answer.

Q. Whatever extent you have intrastate cars that were southbound refrigerator cars, you have classified intrastate, regardless of the purpose they come into the state for?

A. I will explain that in this way: These cars are moved into the State of Florida after having been conditioned and iced. They are placed and the shipper is permitted to load them to any point which he may desire.

Q. Doesn't your agent at Sanford, for example, notify the [fol. 248] distributor at Jacksonville how many cars he wants for northbound loading?

A. He sends notice for the number of refrigerator cars wanted for loading, but at the time, the destination is not available and the shipper seldom knows.

Q. So the fact of the matter is unless it is a loaded car, all the movement you have in the State of Florida, southbound, is classified by you as intrastate car?

A. Yes.

Mr. Pettijohn: That's all. Thank you.

By Mr. Hillyer:

Q. Mr. Rush, in your experience, I understood your entire career was devoted to transportation? That is, to the physical operation, is that correct?

A. Yes.

Q. Have you had any experience in accounting or cost accounting?

A. No, sir.

Q. When you spoke of the expense of the train of local as compared with through trains and so forth, you had in mind, I believe, the matter of the wages to the crew almost entirely, is that correct?

A. Entirely.

Q. Did you take into consideration that one local train might have one hundred cars and a through train might have fifty?

A. An analysis was made of the total cars handled in each [fol. 249] train. There was no particular car limit singled out.

Q. In other words, your remarks then related to the train unit exclusively and did not take into consideration the number of cars per train?

A. We did not make a segregation of the heavy trains or the light trains. We took them for a specified period, both in through and in local freights and separated the intra- and interstate cars.

Q. And you didn't take into consideration the difference, what the difference might be in average loading per car?

A. The tons per car was not taken into consideration.

Q. And you didn't take into consideration the length of haul?

A. The mileage that these cars made? No, sir.

Q. You didn't take into consideration the type of switching service required for one class of freight as compared with another?

A. Only in generalities, outlining that the expense of local service, due to the excessive switching required, is more expensive to us.

Q. In states outside of Florida, isn't it true that the Coast Line has local trains and has short trains for instance between short-haul points, as well as through and overhead traffic?

A. I can speak for portions of Georgia and Alabama, of which I am in charge, yes.

Q. Aren't the wages of the local train crews the same in [fol. 250] Georgia and Alabama as they are in Florida?

A. Yes.

Q. Isn't that true of branch line operations?

A. Certain branch lines have a different rate, but that is very little different and not enough to affect the over-all picture. They have a differentiation rate.

Q. Don't you have some particularly long trains in Florida such as phosphate rock going to Tampa. For local traffic?

A. The length of trains is not excessive because of the tonnage in the phosphate cars when they are loaded. That tonnage is so heavy that you do not get a long train.

Q. In your study, how did you classify your phosphate trains going to Tampa?

A. That is intrastate traffic when destined to a point in Florida.

Q. Even though it is to be exported?

A. We bill to Port Tampa. When it is billed to Port Tampa, it is an intrastate movement. The exporting does not take place until the shipper directs the vessel in which it shall go.

Q. Do you have any movements of forest products to any ports in Florida?

A. Very little, sir, in the last year.

Q. And you would class those all as local trains, would you?

A. It wouldn't be intrastate if it is so billed.

[fol. 251] Q. Even though it is destined to interstate or foreign ports by water?

A. I could only answer that, that—but I'd have to be governed by the billing. If it is billed to Jacksonville and originated in the State of Florida, it would be classified as an intrastate. The disposition of it, what the company makes of it after the arrival at the port is not known to me.

Q. You referred to movement into Palatka, a local movement. Was that a particular class of traffic?

A. A large percentage of traffic on that line between Rochelle and Palatka or Palatka and Rochelle, rather, is sand and road-building material.

Q. Those materials usually move in heavy trains? A great many cars?

A. No, not an excessive number of cars.

Q. Do you have any trains on interstate points from that region? That same region?

A. No. No movement of any consequence, Mr. Hillyer.

Q. In drawing your conclusions on this question of local and through trains, did you arrive at the classification of trains from the wheel reports?

A. Wheel reports, yes.

Q. Would they necessarily show which was a strictly branch line portion of that movement and which was the local train, or not?

[fol. 252] A. The wheel report shows the point of origin and the destination and it also would show you the mileage which that particular car made on that particular train. For example, in the car in the case of the Palatka branch, namely Palatka to Rochelle, we took the wheel report, sir, and counted the cars, showing the point of origin and the

destination and in that way obtained the information which I have testified to.

Mr. Hillyer: That's all I have.

By Mr. Wells:

Q. Mr. Rush, in the studies that you made, about which you have testified, did you classify all empties as intrastate trains?

A. If they were moved by these intrastate trains, yes. Because the destination,—the car was not billed from the point of origin to any one specific destination.

Q. I don't think that quite answers the question. In the studies you have referred to in your testimony here, did you treat each of the empty cars in this particular train as an intrastate movement?

A. Yes.

Q. You stated that there was practically no movement within Florida intrastate of perishables. That is, fresh citrus fruits and fresh vegetables. Were you referring only to the railroad?

A. Yes, only to railroad transportation.

[fol. 253] Q. Whatever movement intrastate there is in Florida of fresh citrus fruit and fresh vegetables is by motor truck, isn't it?

A. That I can't answer, but I think you are right, sir.

Mr. Wells: That's all.

By Mr. Winn:

Q. Concerning these branch lines, is it not true that all kinds of traffic originates on those branch lines in Florida, all kinds of commodities?

A. Yes.

Q. And is it not true that a great many of those commodities originating on branch lines move interstate?

A. Yes, and in line with the testimony I gave, I made a check of these wheel reports to separate the intrastate from the interstate traffic on these specific sections of lines.

Q. Is it not true that those branch lines are necessary feeders for your interstate trains?

A. Yes.

Q. In other words, they are important traffic originating parts of your railroad plant?

A. Yes,—what was that again?

Q. Is it not true that these branch lines are important interstate traffic originating parts of your railroad?

A. Interstate traffic originates on our branch lines as well as our main lines. Some originate more interstate traffic of importance than other lines.

[fol. 254] Q. It would not be fair, would it, to say that intrastate commerce must bear the cost load of maintaining necessary branch lines?

A. I can only say that the expense of operating our local freight, handling intrastate, costs us more than the handling of the through interstate traffic.

Q. Now, in that connection, you spoke of the greater switching on intrastate traffic. That intrastate traffic has both origin switching and delivery switching, does it not, within the state?

A. Yes.

Q. On your interstate movements you have only originating switching or terminating switching, is that not right?

A. That's right.

Q. Is that not a large part of the explanation of why more switching is on one kind than on the other?

A. Intrastate traffic is, as you say, the originating switching and final terminal switching.

Q. So you have a complete service on the intrastate traffic?

A. That's right.

Q. Performed within the State of Florida?

A. Yes.

Q. Now, on your interstate traffic, only part of the service is performed within the State of Florida?

A. Correct.

[fol. 255] Q. What other additional switching did you have in mind in connection with intrastate, other than what we have been discussing?

A. The picking up of the traffic interstate, as well as intrastate, necessitates your freight train switching that particular car out, respotting the industry. In intrastate on arrival at the destination, it must be placed at a specific

point for unloading. There are certain locations that require more work to get the car in the exact spot that the industry wants it in than others. In the case of interstate traffic you pick up the car and then it is moved throughout the state in the service which is best suited.

Q. And the spotting service is performed at the other destination, out of the state?

A. Yes.

Q. From a rate standpoint, Mr. Rush, you are compensated for both originating services and delivering services whether the service is intrastate or interstate?

A. I am sorry, sir, I can't testify on the rates.

Mr. Winn: Very well, that's all.

By Mr. Ribe:

Q. Mr. Rush, you testified as to the cost of your intrastate service, as compared with interstate service, but the only factor of cost you treated was the wages of your crews. You did not in arriving at the conclusion take into account the cost of maintenance of branch line traffic as compared [fol. 256] with branch service. You completely omitted all those costs?

A. I can only testify as to the wages. I did not testify as to coal, fuel, maintenance, both of locomotives and equipment. I made no study.

Q. Nor of the track?

A. Nor of the track.

Q. You say maintenance. That also includes depreciation, does it not?

A. Yes, sir.

Mr. Ribe: That's all.

Comm. Patterson: Any further cross examination?

By Comm. Patterson:

Q. Mr. Rush, you made a statement about your branch line crews as distinguished from main line crews. Do you have any such train service known as mixed train service down here?

A. Yes, we do.

Q. Would that mixed train service be on branch line or main line?

A. All in the State of Florida is on branch line.

Q. How do you pay those crews? Do they get the same pay as what the freight crews? Or more or less?

A. The same as the local freights on the lines in Florida.

Q. In the lines in Florida?

A. Yes, sir.

[fol. 257] Q. You testified with respect to the separation of your testimony as between branch lines and main lines and did I understand you to say that you hadn't separated that service or that you had separated it?

A. We separated this service in my testimony, if I understand your question correctly. We took, sir, certain branch lines. As an example, between Palatka and Rochelle. We gave those figures. Then we took a main line.

Q. I am not talking about the lines. I am talking about the trains on the line. Did you separate your local trains from your through freight trains in every sense in your testimony?

A. Yes.

Q. Now there was some testimony with respect to the terminal service in Florida. Did I understand you to testify that in Florida on intrastate traffic you'd have two terminal services in every instance?

A. Yes.

Q. What would happen on a branch line that intersected the main line between terminals in Florida, if you understand what I mean. A branch line comes into the main line. Did you testify the originating point would be one terminal and the destination would be another terminal?

A. Yes.

Q. What would be the situation in respect to the intersecting point where the branch line intersects the main line. [fol. 258] Would that be a third terminal?

A. Yes, I dealt with point of origin and destination. I did not deal with junction line where a branch line set it off to be picked up by another train.

Q. You didn't regard that as any moment?

A. I did not take that into consideration, although it does produce additional expense.

Q. You testified, I think, with respect to wheel reports. How are those wheel reports made out? Doesn't each conductor make his own separate wheel report?

A. He does.

Q. And the wheel report in each instance then would correspond with the run of the conductor, is that correct?

A. Yes, sir, you are correct.

Comm. Patterson: Any further questions?

By Mr. Pettijohn:

Q. You- conductor's wheel report shows final destination of the car, does it?

A. No, sir. I mean yes.

Q. And you made classification on the final destination of the car as shown on the conductor's wheel report?

A. Yes, both intrastate and interstate.

Q. You didn't give any consideration as to lading, whether it was moving on intrastate or interstate rates?

A. I cannot testify on rates.

Mr. Pettijohn: Thank you.

[fol. 259] By Comm. Patterson:

Q. I would like to get that straight. How the conductor's wheel report can show final destination of cars that might be diverted for some reason or for reassignment?

A. Diversion is usually made after the car is in route and there is very little diversion in an intrastate traffic. Practically none, sir.

Q. On intrastate traffic?

A. Yes, sir.

Q. But how could the conductor's wheel report show the final destination when the car was shipped on consignment, reconsignment or might be diverted?

A. The only information he can show would be the billing destination as furnished him when he moves the car. The intrastate diversions are negligible. It is the interstate diversions. The preponderance are interstate diversions. Therefore, the conductor would not know where the car was going because it is invariably diverted, sir, at a centralized point.

Q. You testified that all of the cars that you classified, that your classification was made entirely from information on the waybills, did you?

A. Yes.

Q. If a waybill should,—if a car should be billed from some point in Florida to another point in Florida, and the [fol. 260] waybill should state the final destination that it is for movement beyond some point in Florida, how was that classified in your report?

A. If it was wholly within the state it was intrastate. If the destination was beyond the state, we showed the final destination as interstate.

Q. Well, was that exactly as you previously testified? Now bear in mind what I am trying to get in my head as to what you did with this class of traffic that was billed from Palatka, for example, to Jacksonville, and were shown as having final destination to some point outside the state, which the way bills frequently do, don't they?

A. The final destination is invariably shown. In fact, it is always shown on the way bill and if that waybill showed Jacksonville, it would be classed probably, as an example, from Palatka to Jacksonville, it would be classed as intrastate; if it was billed from Jacksonville moving through Jacksonville, we'll say to Baltimore, it would be classed as interstate.

Q. Well, now, I want to be sure that we understand each other alike. I am not talking about an interstate waybill. I am talking about a waybill, local to the Atlantic Coast Line from Palatka to Jacksonville, but the waybill shows the final destination, that is, the waybill shows it is to be moved beyond Jacksonville. It perhaps will be rebilled in Jacksonville, but the destination is shown on the waybill.

[fol. 261] A. When the destination is shown as Jacksonville, sir, we classify it as intrastate.

Q. Now then, this—what do you call this rock?

A. Phosphate?

Q. Phosphate rock in Florida, when that phosphate rock is billed from some point in Florida to, we'll say, Port Tampa and the final destination is shown on the waybill, how did you classify that?

A. The traffic is billed, sir, local to Port Tampa to the

agent for the steamship company. That goes as an intrastate shipment.

Q. You know it is to be moved interstate, though?

A. Yes, we know that it is to go out of the state.

Q. You still classed it as intrastate?

A. That's right. I'd have to take the waybill from which I make my report.

By Mr. Harrison:

Q. How do you classify traffic moving between points on your line on Peninsula Florida and points on the L & N, and Chattahoochee to Pensacola. How do you classify that?

A. Anything that moves out of the State of Florida is classified as interstate?

Q. Anything that moves out of Florida back into Florida, you count that as interstate?

A. When it is moving out of Florida, that is counted as [fol. 262] interstate. That is my information.

Q. That applies there to West Florida?

A. Yes.

By Mr. Pettijohn:

Q. Is there any diversion point on intrastate traffic in Florida?

A. The tariff provides that a shipper may divert at any point. Our principal diversion points are on interstate traffic because it is negligible and doesn't warrant our setting up a regular diversion but he has the right at any time to divert his traffic, but that is negligible, sir.

By Mr. Gwathmey:

Q. On your interstate movement, where you do have diversions, do not the diversions ordinarily take place at the point outside of the state of Florida?

A. They do.

By Mr. Hillyer:

Q. Isn't it a fact that a great many shipments of perishables are billed first to one of your points in Florida such as High Springs on your line?

Mr. Gwathmey: Did you say perishables?

Mr. Hillyer: Yes.

Mr. Gwathmey: We have already stated perishables are not involved here. Do you want to get that answered and get into that question?

Mr. Hillyer: Let me ask a couple of questions.

By Mr. Hillyer:

Q. Isn't it a fact that there are shipments going to points in Florida which are billed as, say lumber, for example, may be billed to Florida East Coast to Batton yards and afterwards diverted or reassigned during transit. [fol. 263]

A. There may be isolated cases, Mr. Hillyer, but it is negligible. Very little.

Q. Leaving out lumber, would you say there is very little diversion on Batton yard going to interstate points eventually?

A. We seldom have diversion on intrastate.

Q. Competitive with the Florida East Coast? Are you?

A. Yes, sir.

Q. Don't you know their practices in connection with the billing?

A. No, sir, I can't answer that.

By Mr. Petteway:

Q. How do road aggregates in Florida move for the most part?

A. Intrastate.

Q. Local freight trains?

A. Yes, sir.

Mr. Petteway: Thank you.

Comm. Patterson: You are excused.

(Witness excused.)

J. N. BROETZMAN, was sworn and testified as follows:

Direct examination.

By Mr. Gwathmey:

Q. State your name, residence and railroad position?

[fol. 264] A. J. N. Broetzman, 715 East 49th, Savannah, Georgia, and headquarters in Savannah, Georgia.

Q. Did you state your position with the Seaboard?

A. Assistant General Manager.

Q. What is the nature of your duties?

A. I have general supervision over transportation facilities on the system.

Q. Does that embrace the entire Seaboard system?

A. Yes.

Q. Please outline briefly your experience in railroad transportation matters?

A. I have been in the transportation department since 1920 as telegraph operator, agent operator, train dispatcher, chief train dispatcher, and assistant train master, train master, assistant superintendent, terminal superintendent, division superintendent and I was appointed to the position of assistant general manager at Savannah, Georgia, on July 1, 1948.

Q. What is the total mileage of the Seaboard and how much is located in the State of Florida?

A. We have a total mileage of 14,153.26 miles on the system and in Florida we have 1506.43 miles.

Q. In what states, other than Florida, does the Seaboard operate?

A. We operate in Virginia, in North and South Carolina, [fol. 265] Georgia, Alabama and Florida.

Q. Florida?

A. Yes, sir.

Q. From the standpoint of the amount of service and the expense thereof, how does the transportation of intrastate freight traffic within the State of Florida compare, generally speaking, with the transportation of interstate traffic moving between Florida and other states and elsewhere on the Seaboard system?

A. Conditions under which intrastate traffic is handled in the State of Florida as compared with the handling of

interstate traffic moving between Florida and other states and elsewhere on the Seaboard are much less favorable from the standpoint of cost of operation.

Q. On the Seaboard do the same trains ordinarily handle both interstate and intrastate traffic, the two kinds of traffic to that extent receiving the same service?

A. Yes, intrastate traffic is handled in both through and local train service. Under such conditions both classes of traffic receive the same service. Irrespective of whether or not intrastate traffic is handled in through or local freight trains, in no case would the cost of handling be any less than the handling of interstate traffic.

Q. Is the intrastate traffic, as contrasted with the interstate traffic, ordinarily handled to a greater extent in local [fol. 266] rather than in through freight train service?

A. Yes.

Q. Can you give some illustrations of the extent to which the freight train service operated in Florida consists of local rather than through train operations?

A. A large percent of the freight train miles operated in the State of Florida, particularly the South Florida Division, is local freight train miles. For the calendar year 1948, local freight train miles to total freight train miles operated on the North Florida Division was 24.2 percent and on the South Florida Division 61.9 percent as compared with 21.5 percent for the remainder of the railroad. Percent of local freight train hours to total freight train hours on the two Florida Divisions for the year 1948 was 52.5 percent, as compared with 35.8 percent for the remainder of the system. On the South Florida Division, where the percent of local freight trains operated is substantially greater than is the case of through freight trains, a check of traffic handled for the period March 21st to 31st, inclusive, 1949, shows 600 interstate cars and 97 intrastate cars handled in through freight service, while 1,243 interstate cars and 2,332 intrastate cars were handled in local freight train service—the intrastate exceeding the interstate cars 59.7 percent. Percent of local freight train switching locomotive miles to total freight train switching locomotive miles for the same [fol. 267] year North Florida Division was 69.5 per cent—for the South Florida Division 89.7 per cent as compared

with 49.9 percent for the remainder of the railroad. This has a very definite adverse effect on unit cost of operation.

Q. From the standpoint of expense, how does local freight train operation compare with through freight train operation?

A. The cost of local freight train operation is much higher than is the cost of through freight train operation.

Q. Why is local train service more expensive than the through service?

A. The rates of pay for local freight crews is higher than is the case of through freight crews and further, practically all of the local freight crews make considerable overtime, which is paid for at time and one-half. As an example, for the month of March on the South Florida Division, a total of 1,075 local freight trains were operated, crews of which were paid a total of 3,109 hours, 25 minutes overtime, or an average of 2 hours, 54 minutes per train operated. On the North Florida Division, during the period March 13th to 21st, inclusive, 1949, excluding two Sundays on which days local service is not operated, train No. 51 operated Baldwin to Tallahassee, a distance of 147 miles, 7 trips, handled 190 intrastate and no interstate cars; average daily time on duty 15 hours, 43 minutes, average overtime four hours, one [fol. 268] minute. Local freight train No. 52, operated seven trips, Tallahassee to Baldwin for the same period, handled 182 intrastate and 56 interstate cars, average time on duty twelve hours, 36 minutes, average overtime one hour, 44 minutes. This is a total of 14 trains operated, handled a total of 418 cars of which 372 or 89.0 percent were intrastate, the remaining 46 cars or 11.0 percent were interstate. A two-day check, March 13th and 14th, 1949, of through freight train service operated between Baldwin and Tallahassee in both directions, shows total of 13 trains operated and traffic handled by those trains consisted of 90.0 percent interstate—the crews averaged on duty total of five hours, 26 minutes, as compared with the 14 local freight trains operated averaging 14 hours, nine minutes on duty. For the year 1948, the cost of crew wages and fuel per 1,000 gross ton miles operated on the two Florida Divisions was 88 cents, as compared with 73 and nine-tenths cents for the remainder of the system. The cost on the Carolina Division,

where a large percent of the traffic is interstate, was 53 and three-tenths cents per 1,000 gross ton miles. This shows conclusively that the cost for handling intrastate traffic is much greater than is the case of interstate traffic.

Q. Does the Seaboard have a substantial amount of branch line mileage in Florida, and how does Florida compare in this respect with other portions of the Seaboard system?

[fol. 269] A. The total miles of road operated by the Seaboard in the State of Florida is 1,562.43, of which 926.18, or 59.3 percent, consists of branch lines. Total miles operated in states other than Florida 2,590.83, of which 877.1 or 33.9 percent are branch lines.

Q. Mr. Broetzman, from an operating standpoint how do you distinguish between main lines and branch lines?

A. Our service is classified on our operating reports as through or local service, through and local freight mileage and that is from where we got these figures,—from what we call 411 and seven daily operating reports.

Q. Does the treatment of the line as branch or main line from an operating standpoint necessarily correspond with its treatment for other purposes and in connection with reports, for example, made to the Florida Railroad Commission?

A. It may differ. I am not qualified to say how the Commission classifies the branch line and main line of service, or trackage. It may be on an evaluation basis or some other basis. I don't know.

Q. Is the traffic, other than perishable fruits and vegetables, which is handled on these branch lines principally intrastate or interstate traffic?

A. The traffic handled on the branch lines is largely intrastate.

Q. Is this branch line traffic handled largely in local [fol. 270] freight train service?

A. Yes, a large percent of traffic originating on branch lines is handled in local freight train service.

Q. Is branch line service more expensive to operate than main line service?

A. Yes, sir.

Q. What are some of the reasons why branch line service is the more expensive of the two?

A. As has been previously stated, traffic originating on branch lines is handled principally by local freight trains, the cost of local freight train operation is substantially higher than is the case of through freight train operation. The minimum wages paid for a local freight crew per day are $66.15, while the wages for a local freight crew for an average day are $104.19, or 57.5 percent more than is paid for the operation of a through freight train.

Q. In view of what you have said above, what is your opinion as to the expense of conducting railroad transportation in general in the Florida peninsula, as contrasted with the expense of such transportation on other portions of the Seaboard's system.

A. The cost of freight train operation in the State of Florida is much higher than elsewhere on the Seaboard system, due in large part to the fact a large percent of the traffic is intrastate and is handled principally in local freight [fol. 271] train service, and as has been previously pointed out, the cost of local freight train service is considerably more than the cost of through freight service.

Mr. Gwathmey: The witness is available for cross examination, Mr. Commissioner, I am sure it is understood that I haven't the slightest desire to cut off cross examination. I want everybody to have that chance, but there are a large number of people in this hearing and a great number of them are cross examining and I respectfully suggest we make better progress and the attorneys arrange among themselves as to the order they will cross examine and that each attorney or representative complete his cross examination while he is about it and not think up some more questions after he has sat down and keep on with a running fire of cross examination.

Comm. Patterson: I think it would be a good thing to do if the attorneys for the opposition would try to get together and consolidate as much as they can. It may save us from working some long nights here before we get through.

Cross-examination.

By Mr. Petteway:

Q. Mr. Broetzman, in testifying that transportation conditions generally are less favorable in Florida than else-

where, did you have in mind any conditions other than ones you specifically mentioned in your testimony?

A. Operating conditions we have in mind, of course. [fol. 272] Some have been stated, but are intrastate movements, some are confined to local and switching service. That is quite expensive.

Q. You heard Mr. Rush testify? You were in the room when he testified, were you not?

A. Yes, sir.

Q. Does the management of Seaboard also have control over where the traffic will move in local trains or in through trains?

A. The control of the movement of traffic as between local and through freight service is largely governed by the necessities, the service necessities that we have to meet with the various shippers and consignees; in some cases the physical condition, where perhaps a larger type of locomotive can't go and you have to use smaller types and through freight service assignments are usually heavier power. Also, through freight service, as you know, operates principally on schedules that will not permit stopping en route and switching local stations.

Q. You do have control over that situation, then, do you not?

A. Oh, yes, we regulate it according to the needs.

Q. Now, do you handle or do you classify empties moving in Florida just as the Coast Line does, as intrastate?

A. I didn't exactly understand Mr. Rush, but the way we do, our cars are generally transferred from the north. The [fol. 273] Majority of our empty cars are refrigerators and they are transferred in from the North and it is billed either on Jacksonville or Baldwin and those are the strategic distribution points, being our gateway to Florida and all movements then from Jacksonville to Baldwin to distribute these empties would be considered intrastate.

Q. Do you have a phosphate movement to Port Tampa similar to the one of the Coast Line?

A. We have some cars billed to Port Tampa in connection with the Coast Line. They have to move into Port Tampa by Coast Line.

Q. Do you classify those as intrastate?

A. Yes, we do.

Q. Do you know whether interstate or intrastate rates are applied to that movement?

A. I do not.

Q. You do not know about the rates?

A. No, sir.

Q. Now, do you have any road aggregate movement over your road in Florida?

A. Yes, sir.

Q. How does that move mostly?

A. Intrastate, local switcher freight.

Mr. Petteway: That's all.

By Mr. Pettijohn:

Q. Mr. Broetzman, what is the heaviest loading com-
[fol. 274] modity in tons that originates in Florida?

A. On the Seaboard, phosphate rock.

Q. And what is the heaviest movement that terminates on the Seaboard in Florida?

A. I would say,—I can't say. Possibly, my guess would be phosphate rock.

Q. How did you classify that, as an intrastate movement?

A. All cars destined to points in Florida and originating in Florida would be intrastate, yes, sir.

Q. Didn't the phosphate rock shipped to Tampa and Port Tampa for advancement by water become interstate?

A. It depends on the billing. If it is billed to Tampa for delivery to shipping agents, I don't see how we can consider that interstate shipment.

Q. Don't you know all the shipments moving to Tampa for transhipment moved under interstate?

A. No, sir, I don't.

Q. You don't know of any moving intrastate?

A. I am sorry to have to admit I simply don't know anything about the rates.

Q. Did you state where your separation between North Florida and South Florida was? You mentioned a division?

A. That's right. The North Florida Division consists of the mileage from Chattahoochee and the state line on the Bainbridge subdivision to Jacksonville and including the St.
[fol. 275] Marks branch, the Monticello branch and the inclusion of the line from Baldwin and Jacksonville south to

Homestead and the Orlando branch, the Wanee, and the Istokpoga spur.

Q. World it be a fair statement to state everything north of Wildwood and southeast of Wildwood to below Miami?

A. That is the North Florida Division, yes, sir. Now, with one exception, please. The line that extends north of the Wildwood, parallel to Waldo, the second line which is known as the Brooksville line is not any part of the North Florida Division.

Q. I understand. Now, did I understand you to say there were 926 miles of main line track in Florida?

A. That's what the figures I have show, yes, sir.

Q. Who classified that mileage, do you know?

A. We arrived at that from our operating time tables.

Q. You also made some reference, I understood, as to the Commission. You didn't know how the Commission made the separation between branch and main lines. What Commission were you referring to?

A. Perhaps I didn't use the proper phraseology, but I understand that is a report required by the Commission and evidently our line or the representatives who are required to render that report of that have instructions from the Commission or somebody as to what should be termed a main line and what should be termed a branch line.

[fol. 276] Q. You mean to say there is any other instructions other than the instructions at the top of the schedule?

Mr. Gwathmey: If the Commissioner please, may I interrupt? I don't think this witness has anything whatever to do with the preparation of that report.

The Witness: No, I don't.

By Comm. Patterson:

Q. What significance does that mileage have, anyway? How much difference is there between the reported mileage and the mileage that this witness has tabulated from his time table?

Mr. Pettijohn: The total mileage in Florida is 1,564.37, of which the main line is 1,500.1.

Comm. Patterson: The aggregate mileage is off two miles.

Mr. Pettijohn: I am not questioning the aggregate. 926

being main line and this witness testified the big expense of the branch line and under his testimony you'd come to the conclusion that 648—and I think it has an important bearing on the case.

Mr. Gwathmey: May I ask a question, Mr. Pettijohn?

Mr. Pettijohn: I asked him about the other.

Mr. Gwathmey: May I ask you a question?

By Mr. Pettijohn:

Q. You say you made your statement up from the workmen's time table?

A. In our operating time table and what we operate our local service.

[fol. 277] Q. And what do you construe branch line, not what your superior officer considers branch line?

A. What do we consider branch line service?

Q. Who do you mean by "we"?

A. The operating department.

Q. Do you know where the accounting department gets the mileage?

A. As I have stated once before, I don't know how they arrived at that mileage.

Q. Are you challenging the correctness of the sworn report to the Commission?

A. No, indeed. They may have a different basis.

Q. You said branch line, other than perishable, was mostly intrastate. What percentage of your total branch line is intrastate, including the perishable?

The Witness: Would you read that back?

(Last question read by the reporter.)

A. I don't have those figures but intrastate perishable is very small.

Q. I am asking you what percentage of the total branch line traffic including perishables is intrastate?

A. I don't believe I have that figure.

Q. What is the meaning then that the intrastate, with the exception of perishables, is the greatest portion of branch line traffic?

[fol. 278] A. I might state it this way: That the greater portion of our branch line traffic consists of sand, gravel,

phosphate and pulpwood, and commodities of that kind. Some clay.

Q. If you have a branch line traffic of which 90 percent for example is interstate perishables, what significance is it to say that of the ten remaining percent it is mostly intrastate?

Mr. Gwathmey: That question is argumentative. It seems to me——

Mr. Pettijohn: I am asking the question why he——

Comm. Patterson: You can draw your own conclusion.

By the Witness:

A. Our branch line produced more non-perishable intrastate than it does perishable traffic. I can't tell you how much that is divided into as between perishable or dead freight.

Q. You spoke about 90 percent of your trains, 13 and 14 between Baldwin and Palatka as being intrastate. What commodities do they handle between Baldwin and Tallahassee intrastate in any volume?

A. Principally pulp wood.

Q. Did you give any figures showing what the movement intrastate and interstate was for your through trains from Tallahassee?

A. Yes, I think I did. A two day check, as I have already testified, March 13 and 14, 1949, between Baldwin and Talla- [fol. 279] hassee in both directions shows 13 trains were operated and that traffic consisted of 90 per cent interstate.

Q. 90 percent interstate?

A. Yes, sir.

Q. Does most of that traffic that is interstate traffic that comes to you there at Chattahoochee and Bainbridge?

A. Yes, sir.

Q. You didn't in any case did you, determine whether or not a car was carrying interstate or intrastate traffic by reference to the waybill?

Q. Only by the destination shown on the waybill. We checked no rates whatsoever. In fact, the conductor, I am sure, and I don't know when I look at the rate whether it is interstate or intrastate.

Q. You just took the conductor's wheel report showing

origin and destination and points between which he carried with the description of the commodity?

A. That's right.

Mr. Pettijohn: That's all.

By Mr. Hillyer:

Q. Mr. Broetzman, as I understand your testimony, you are talking about transportation entirely from the standpoint of a transportation man?

A. Yes, sir.

Q. Have you had any experience at all in accounting?

A. No, sir.

[fol. 280] Q. When you use the term cost and expense, did you have in mind particularly the difference in the wages of a crew of local train and through train?

A. In some of these figures, the wages were considered exclusively and in some of the figures we did include fuel.

Q. Wouldn't it be true in any stat in which you operate that cost of the local train woul be higher than the through train? There is nothing peculiar about Florida in this respect, is there?

A. The rates are applicable over the system, that is, local freight rates, but the operating conditions and the volume in Florida, that is, the local freight train mileage is so much greater and branch line miles is greater and the local is greater and hence the center of that particular operation centers around Florida.

Q. The wages of the local train crew, are they any different in Florida from elsewhere?

A. No, sir.

Q. And the wages of the through train is the same in other states as in Florida?

A. Yes, sir.

Q. Are there any topographical conditions or geographical conditions such as hills that make Florida operation more difficult than other states?

A. The only geographical condition that makes Florida [fol. 281] a more expensive operation than the general run of local service is the short mileage runs between the terminals or point of origin and destination. For instance, we have any number of trains operating within the phosphate

territory, making very short hauls and they have long hours and the same is true in the territory where we have heavy wood movements.

Q. Now, with respect to that run, you selected between Jacksonville and Tallahassee. Isn't it a fact that most of your high density trains operate north and south through the Baldwin or Yulee gateways?

A. Yes, sir, the heaviest trains that is through freight operate between Baldwin and Wildwood and the tonnage that is handled through Jacksonville is not nearly so great as it is through the Baldwin terminal.

Q. Isn't the line from Jacksonville to Tallahassee very low density line of the Seaboard?

A. We handle considerable tonnage there. I cannot, of course, compare that line with density to Wildwood, Baldwin line.

Q. In Virginia and North Carolina, isn't it a fact that you have topography of the country which usually requires you to figure grades and curves whereas in Florida you have almost level flat country all the way?

A. The elevation, the variation in elevation is much greater in the territory north of Jacksonville than it is in Florida. However, grade conditions between Jacksonville and Bainbridge and Chattahoochee are almost comparable [fol. 282] to those in North Carolina. We have some one point two percent grades on the west of Tallahassee line.

Q. Isn't it a fact that your average maximum grade within the South Florida division is less than any other division of the Seaboard?

A. That's true.

Mr. Hillyer: That's all I have, sir.

Comm. Patterson: Any further cross-examination?

By Mr. Ribe:

Q. Again you testified the same as the previous witness that the cost of local freight trains vary considerably from that of through freight trains, but the only facts that you cited was rates. Did you not take into consideration——

Comm. Patterson: He answered the same question. Would your answer be the same as the Coast line if he asked you the same questions?

A. I'd have to make one change in some of our figures, though. Gross ton miles, we did take fuel into consideration because there is quite a difference in fuel consumption as between local freight and through freight in per thousand gross ton mileage.

Q. I may have misunderstood. I thought those fuel figures had to do with traffic within Florida as traffic moving within Florida, Alabama and Carolina. Within Florida, did you give your fuel figures for local service and through [fol. 283] service?

A. The fuel,—wages and fuel in 1948 per thousand gross ton miles operated on two Florida divisions was eighty-eight percents as compared with 73.9 percent on the rest of the system.

Q. That has nothing to do with the breakdown between local freight trains and through freight trains within Florida?

A. No, that isn't broken down as to through or local.

Q. In other words, there were many elements of cost that you did not consider in arriving at conclusions for that local freight train service is more expensive than through freight train?

Mr. Gwathmey: The witness very distinctly said it was due largely to matters he mentioned.

Comm. Patterson: Any further cross-examination?

By Comm. Patterson:

Q. I think, Mr. Broetzman, that you testified that the average day with respect to local train service was greater than with respect to through train service. Did you mean the average day or the average trip. Isn't a day a day wherever you find it? When you speak of minimum days?

A. Yes, sir.

Q. I am not speaking of any kind of a day. Days are not minimum days. A day is a day and when you get beyond a day, you pay overtime, a time and a half time, but a day is a day wherever you find it?

[fol. 284] A: If you will permit me, I will clarify that.

Q. Yes, what I want to clear up——

A. For instance, a through freight day consists of eight hours or one hundred miles or less. The same thing in

local freight day. But there is a differentiation in that minimum local freight rate for a minimum day. It is greater than the through freight day. Now, the figures that I prepared here was the average work day.

Q. Let's stick to the minimum for a minute. That is eight hours whether it is through freight or local freight?

A. Yes, sir.

Q. When you get beyond the minimum day, you go into overtime, don't you?

A. That's right.

Q. And overtime is time and a half whether it is through freight or local freight?

A. That's right.

Q. Are you talking about the average day or average time consumed on a trip?

A. We took the service trips and averaged it. Say we had, for example, ten through freight service trips, ten local freight service trips. The local freights, as I stated in the testimony, average two hours and 54 minutes overtime on a trip.

Q. On a trip?

[fol. 285] A. Yes. That overtime was included in the service day in this 104 dollars and some cents plus differentiation as between through freight rate and local freight rate.

Q. Then when you said there was an average of four hours overtime for, I think you said a day, perhaps you meant a trip. With respect to local trains, Do you mean that you paid them an average of six hours overtime a day?

A. This particular run that averaged four hours and one minute overtime per day for the seven trips was local between Tallahassee and Baldwin,

Q. How much overtime did you pay them at the rate of six hours overtime or four hours at the regular rate?

A. Full—well, if you will permit me now, there's 147 miles involved in this run. The basic straight time is payable up to the divisor of twelve and a half into 147. So he had to work his six hours and some minutes before he actually went to time and a half. Then he was paid four hours.

Q. What I am trying to get at: This four hours, did you pay him at overtime rate or straight rate?

A. Overtime. Time and a half.
Q. That is equivalent to six hours in straight rate?
A. That's right.

By Mr. Harrison:

Q. Did I understand you to testify as to percentage of interstate and intrastate traffic on that local between Tallahassee and Baldwin?
[fol. 286] A. Yes, sir, that was shown.

Mr. Gwathmey: Mr. Harrison, do you want him to repeat it?
Mr. Harrison: It is in the record?
Mr. Gwathmey: Yes.
Mr. Harrison: That's all.
Comm. Patterson: Any further cross-examination? You are excused.

(Witness excused.)

Mr. Gwathmey: Mr. Commissioner, Mr. Wells told me that he has several witnesses for shipments who are anxious to leave and asked if I would be willing to stand aside so he can put them on. I said I would be very glad to accommodate him, providing it is agreeable to the Commission and the Examiner.
Comm. Patterson: All right.

C. E. Reger was sworn and testified as follows:

Direct examination.

By Mr. Wells:

Q. Please state your name and residence for the record?
A. C. E. Reger, 7620 South West 55 Avenue, Miami, Florida.
Q. What is your business?
A. We are manufacturers of fertilizer, chiefly.
Q. At what points?
A. We have mixing plants at Belle Glade, Florida, and Miami.

[fol. 287] Q. In what area is your sales territory, that is to what destination do you ship?

A. From a line drawn east and west from Okeechobee City to Fort Pierce, south on the East Coast to Florida City. That's it.

Q. All of your shipments, then, are intrastate?

A. Yes, sir.

Q. That is from your mixing plants

A. Yes, sir.

Q. From what sources do you obtain your materials that go into your mixed fertilizer?

A. About half of the materials comprising mixed fertilizers are provided and shipped from within the State of Florida. The other half comes from widely scattered areas throughout the country.

Q. So that other half that doesn't come from within the State of Florida all moves by rail on interstate rates?

A. Yes, sir.

Q. Generally speaking, how is the movement of the intrastate materials? That is, by what form of transportation?

A. By rail.

Q. What is the relative movement by what form of transportation outbound from your plant?

A. At the present time about half of our outbound is by truck. The other half is by rail.

[fol. 288] Q. Mr. Roger, do you know whether there is any substantial sales by interstate movement of fertilizer in the area in which you compete?

A. The shipment of fertilizer and fertilizer materials from out of the state points into our area is negligible.

Q. So that the competition with which you are concerned and faced is that of intrastate shipment?

A. Yes, sir.

Q. In your judgment, Mr. Roger, would an increase in the rail intrastate rate on fertilizer and fertilizer materials produce any additional revenue for the rail carrier?

A. It is my opinion that it would divert a considerable quantity of the intrastate movement to trucks.

Q. Do you have any desire, speaking of your own concern, to get into the transportation business as such?

A. We dread it, but we are slowly being forced into it.

Q. What is your view as to whether the particular increase involved in this proceeding would—what effect would that have on your particular method of transportation?

A. Right now we deliver fertilizer by rail at a dollar a ton cheaper than we deliver it as by truck, that is the same material, by our trucks or other motor carriers. If our rates are increased, it will lessen the difference to the extent that most of our customers will demand truck delivery because of the greater convenience to them, the truck mak- [fol. 289] ing delivery to the fields at the time it is needed during their farming operation and we already have considerable difficulty in the sales of our fertilizer because of the fact that there is only a dollar a ton difference. Now, if we have to quote prices delivered by rail that are approximately the same as the truck deliveries, we are going to be forced to use the truck business in a big way.

Q. That, of course, would reduce the revenue you are presently paying to the rail line for their transportation?

A. I should say it would be.

Q. Would an increase of the fertilizer and fertilizer materials rate intrastate, in your judgment, operate to increase any interstate movement of those materials?

A. Well, as the cost of farming per acre increases, there is a general tendency to decrease the number of acres farmed, which will ultimately result in less production of the fruits and vegetables for shipment to northern points.

Q. Do you have anything else to add that has a bearing on the issues in this proceeding?

A. No, sir.

Mr. Wells: The witness is available for cross examination.

Cross examination.

By Mr. Gwathmey:

Q. Mr. Roger, would you be good enough to tell me again the destination you principally distribute your fertilizer? [fol. 290] A. From a line drawn from Okeechobee City to Fort Pierce and an area south of that to Florida City.

Q. Do you distribute mainly to points located mainly on the Florida East Coast Railway?

A. No, sir.
Q. You distribute to some extent to those points?
A. Yes, sir.
Q. Do you sell your fertilizers on a delivered basis?
A. Yes, sir.

Mr. Gwathmey: That's all.
Mr. Wells: That's all.
Comm. Patterson: Are there any other questions?

By Comm. Patterson:

Q. Mr. Roger, when you make these deliveries on demands of the shipper, do you do that with your own trucks or do you employ a for-hire carrier?
A. Mostly with our own trucks.

Comm. Patterson: That's all.

Redirect examination.

By Mr. Wells:

Q. I believe you stated that there was some use by your company of for-hire trucks?
A. Yes, sir.
Q. But the majority of your deliveries is in your own equipment?
A. Yes, sir.

[fol. 291] Mr. Wells: That's all.
Comm. Patterson: Then you are excused.

(Witness excused.)

D. N. Barksdale was sworn and testified as follows:

Direct examination.

By Mr. Wells:

Q. Will you please state your name and address for the record?
A. D. N. Barksdale, Mulberry, Florida.
Q. What is your business?

A. Fertilizer manufacturing.

Q. What general area is your sales territory?

A. The State of Florida.

Q. You deal very slightly in any interstate movement?

A. Not out of our Florida district that I have charge of, we do not.

Q. In that sales territory is there any appreciable volume of sales of the mixed fertilizer that moves interstate?

A. In my opinion there isn't.

Q. And you are familiar with the territory in which you work?

A. The only point is in the extreme west. There is a slight interstate movement up there.

Q. But generally in the peninsula of Florida there is intrastate movement almost entirely?

A. Almost entirely.

[fol. 292] Q. Where do you obtain the materials used in your plants, Mr. Barksdale?

A. We obtain, other than super phosphate which is obtained within the State of Florida, practically 95 per cent of the remaining materials are obtained outside of the State of Florida.

Q. Would there be any difference in the sources from which you obtain your materials if this change in intrastate freight rates should become effective?

A. No, sir, it depends on availability of source of supply.

Q. In general, would your answers be the same to the questions as those propounded to Mr. Reger who preceded you on the stand?

A. Substantially so, yes.

Q. In your opinion, would the increase in the rail freight rate intrastate operate to improve or increase the revenue of the rail carriers?

A. In my opinion as far as our business is concerned, I think we would have less rail movement with an increase in intrastate freight rates.

Q. By the way, how many increases would be affected if the proposed increase were placed on the phosphate, for example?

A. Well, the operation, as the phosphate rock moves into your drier or grinder, that is one movement. Then your

dried produce it moved to an incinerator property for processing into super phosphate. Then it is shipped out to [fol. 293] the dry mixers who in turn use it for the mixed fertilizer and ship it as such for direct application.

Q. In other words, there are four separate and distinct movements?

A. Yes, sir.

Q. The material itself has three movements before it is mixed and moved as a mixed fertilizer?

A. That's right.

Q. Do you have anything to add, Mr. Barksdale?

A. No, sir.

Comm. Patterson: Cross examination?

Cross examination.

By Mr. Gwathmey:

Q. Mr. Barksdale, are you in a position—That is, is your position that you are opposing an increase on the rate of fertilizer materials as well as fertilizers?

A. I am opposing increase in rates on mixed fertilizer and also on super phosphate.

Q. You draw a considerable amount of fertilizer materials in your plant?

A. From out of state, yes, sir.

Q. From out of the state?

A. Yes.

Q. And on that material the rates have already been increased, have they not?

[fol. 294] A. Yes, sir.

Q. Do the out-of-state shippers distribute the fertilizer materials in Florida into Florida in competition with local people?

A. The only competition would be on super phosphate, if it were obtained outside of the state instead of in Florida. Practically all the other materials used are obtained outside, New Mexico, and in the coal mining district, sulphate of ammonia which is a by-product of steel mills and so on, obtained wherever possible, wherever available.

Q. Speaking now of fertilizer, you are advised, are you not, that the interstate rates on fertilizer in general through

out southern territory have received the same increases in rates that the railroads are seeking to have made effective intrastate in Florida. You do know that, don't you?

A. My understanding is that it hasn't been granted in Virginia.

Q. I said interstate?

A. Yes, I am aware interstate rates have increased, but the intrastate rate is not.

Q. Have you made any investigation for the purpose of determining the extent, if any, to which the movement of fertilizer in the South has been to trucks since those rates were put in?

A. I have only made a study in the State of Florida.

[fol. 295] Q. Only in the State of Florida?

A. Yes, sir.

Q. Florida has not yet had any of those increases either on what we call Ex Parte 162 or Ex Parte 166, has it?

A. I think it has. I am not familiar, but I think the one before this was. The one before this 25.

Q. I believe you are right, sir.

Q. And the 25 and six per cent has not been granted. That is my understanding.

Mr. Gwathmey: That's all I have.

Mr. Wells: One other question.

Redirect examination.

By Mr. Wells:

Q. Mr. Barksdale, in your judgment if there were an additional 25 per cent added to the intrastate rate on materials, would there be any increased movement from without Florida to a destination in Florida of materials, fertilizer materials?

A. I don't think it would affect it.

Q. You don't think there would be any additional movement interstate at all?

A. I do not.

Mr. Wells: That's all.

Comm. Patterson: Witness excused.

Witness excused.

B. A. McCown was sworn and testified as follows:

[fol. 296] Direct examination.

By Mr. Wells:

Q. Will you state your name and residence?

A. B. A. McCown, 432 South Orange Avenue, Orlando, Florida.

Q. What is your business, Mr. McGown?

A. Fertilizer manufacturer.

Q. You heard the testimony of Mr. Reger and Mr. Barksdale, immediately preceding you?

A. Yes, sir.

Q. Would your answers to the same questions addressed to them be the same as their answers, substantially?

A. Yes, sir.

Q. In your judgment, if there were an increase in the intrastate fertilizer rate in Florida would that operate to increase the revenue of the rail carriers there from?

A. In my opinion, it would have a tendency to decrease the revenue or income.

Q. Do you have anything else to add, Mr. McCown, to what has been testified to by the other gentlemen?

A. No, sir.

Q. Why do you say it would have the effect of decreasing the revenue?

A. Well, for the reason that the cost to us is about a dollar per ton more as an average to deliver Fertilizer by trucks over the railroad carload freight rate. As an estimate and guess, I would say that the average haul in move-[fol. 297] ments within the State of Florida is from three to three dollars and a half per ton; with 25 per cent increase, you would just about take up the dollar. The truck could perform an express service, and I think there would be a tremendous tendency by consumers and receivers of fertilizer and fertilizer materials to demand truck delivery.

Q. At the present time, in your particular operation, from Orlando, do you use rail or truck for delivery of your mixed fertilizer?

A. Both.

Q. Can you give us the approximate proportion?

A. Yes, sir, we have two operating units. From one of our units 38 per cent of our deliveries move by truck and from the other unit, 68 per cent move by truck.

Q. You referred to a cost of delivery by truck as being a dollar a ton more than by rail. Are you referring to a delivery by truck to what point?

A. To all points.

Q. Well, is that in a warehouse or is it in the fields where the farmer uses it?

A. Both. We deliver both to the field or grove or warehouse.

Q. So that additional cost by truck which you referred to includes delivery to where the buyer would be using it and it would be applied to the citrus grove or truck farm or whatever he might use it for.

[fol. 298] A. Yes, sir.

Mr. Wells: That's all.

Cross examination.

By Mr. Gwathmey:

Q. Do you have any connection with the Virginia-Carolina Chemical Company?

A. Do I?

Q. Yes, sir.

A. Yes, sir, State Manager.

Q. You are State Manager for the Virginia-Carolina Chemical Company?

A. Yes.

Q. I assume you have jurisdiction in Florida, not outside of Florida?

A. Yes, sir, correct.

Q. Are you familiar with the distribution of fertilizer and fertilizer materials in states like Virginia, North Carolina, South Carolina? Do you have knowledge of that?

A. No, sir, I do not. I have been in Florida so long that my operations are confined within the borders.

Q. You can't say to what extent, if any, these rates have gone into effect up there in North Carolina, South Carolina and Virginia? You can't say to what extent the movement has gone to trucks?

A. No, I cannot because it is outside my scope of operations. I wouldn't know.

[fol. 299] Redirect examination.

By Mr. Wells:

Q. By the way, if the increase of rail rates on The Florida East Coast Railway would operate to divert fertilizer tonnage from the East Coast, do you know of any facts or reason of facts that would keep the fertilizer on the rails if the rates were increased?

A. No, sir.

Q. You think if it would divert it in one case in the Florida East Coast, you think it would likewise divert from the Coast Line through the Florida East Coast?

A. Yes, sir.

Recross examination.

By Mr. Gwathmey:

Q. Do you happen to know whether or not the trucks come south through Jacksonville or bringing back a lot of fertilizer and deliver at points along the Florida East Coast Railway?

A. I will answer the question this way: We own trucks and we employ trucks for delivery of fertilizer and they operate within the borders of our state. Now about any out-of-state or any truck coming south from Jacksonville, I wouldn't know anything about it.

Q. You wouldn't know?

A. No, sir.

By Comm. Patterson:

Q. Did I understand from your testimony you delivered this fertilizer to the siding at the station or to the farmer [fol. 300] in that vicinity at the same price, whichever way it was hauled, either by rail or by truck, is that right?

A. Yes, sir.

Q. And that when it is hauled by truck, it costs you a dollar more to deliver it and that you absorb that dollar. Now is that your testimony?

A. In many cases, we do, sir, on account of competition.
Q. On account of competition?
A. Yes, sir.
Q. And if this increase was required in the State of Florida that cost to you would about balance out; is that right?
A. That is correct, sir.
Q. And that is what you don't want to happen, is that right?
A. That's right, sir.

Comm. Patterson: That's all.

Redirect examination.

By Mr. Wells:

Q. That rail rate you were speaking about that you pay is for delivery at what point by rail?
A. By rail?
Q. Yes. You answered the Commissioner a minute ago. I am not sure it is clear as to the point at which delivery was made by rail under the rate you were referring to as the rate it is delivered. Is it to the siding or to the grove or farm? Where the farmer uses it?
[fol. 301] A. By rail?

Comm. Patterson: I believe he said to the siding by rail.

A. Yes, and grove or pasture or field by truck.

By Mr. Wells:

Q. Siding or wherever the rail goes?
A. That's right.

Mr. Wells: That's all.
Comm. Patterson: You are excused.

(Witness excused.)

Mr. Wells: I have some additional witnesses I will put on in regular order.
Comm. Patterson: You may proceed, Mr. Gwathmey.

M. G. SEIGLER was sworn and testified as follows:

Direct examination.

By Mr. Gwathmey:

Q. Will you state your name and address and railroad position?

A. M. G. Seigler, Assistant Comptroller, Atlantic Coast Line Railroad Company, Wilmington, North Carolina.

Q. Have you prepared an exhibit consisting of 1 to 44, inclusive, to show certain information for the Coast Line as well as for several other railroads?

A. I have.

Q. With respect to information for railroads, other than the Coast Line, where did you get your information?

A. It was furnished by each railroad. Such information for the Coast Line, as well as other railroads, is almost [fol. 302] entirely factual information taken from Annual and other reports to the Interstate Commerce Commission and reports to State Commissions.

Q. Were the figures in all the schedules of your exhibit prepared by you or under your supervision?

A. With respect to the Coast Line, yes. With respect to other lines, I have used figures exactly as furnished to me. It is my understanding that figures for all lines are being introduced at this time merely to avoid the repetition of a separate witness for each line putting in the record, information identical in nature.

Q. In other words, they furnished you the information and you are filing an exhibit that is consolidated, is that right?

A. That's right.

Q. On that basis, are the figures in all the schedules of your exhibit correct to the best of your knowledge and belief?

A. They are.

Mr. Gwathmey: May we have a number for identification?

Comm. Patterson: Identified as exhibit No. 1.

(Respondent's Exhibit No. 1, Witness Seigler marked for identification.)

Q. Are schedules 1 to 7, inclusive, of your exhibit so-called [fol. 303] "Rate of Return" statements, respectively for Coast Line, Seaboard Air Line, Florida East Coast, a consolidated statement for those three roads, L & N, Georgia Southern and Florida, and St. Louis-San Francisco Railway, is that correct?

A. Yes.

Q. Will you please explain the nature of these exhibits?

A. Since all of the exhibits contain information identical in nature, I will explain Schedule No. 1 for the Coast Line which will apply to Schedules 2 to 7, inclusive. The first column to the left on Schedule 1 shows the years beginning with 1936 and extending through the year 1948, with averages for the five-year period 1936-1940 and averages for the five war years 1941 to 1945, inclusive. This is followed by the years 1946, 1947 and 1948, which are post-war years.

The next column shows the carrier's book investment in railway property used in transportation service, including cash and material and supplies, at the close of each year shown. The next column shows such investment less accrued depreciation.

Q. Why did you base your rate of return on book investment in railway property used in transportation service?

A. Because it is a matter of common knowledge that similar computations of rate of return are used constantly in proceedings before the Interstate Commerce Commission, as well as by that Commission in its various reports. Proof of its acceptability to the Commission may be found [fol. 304] in the commission's report of July 27, 1948, in Ex parte 166, Increased Freight Rates, 1947, 270, ICC 403.

Q. Please proceed with your explanation.

A. The next column shows total operating revenues for each year as reflected by the books of account. The next column shows operating expenses taken from the same source. Operating ratio is merely a mathematical computation of the ratio of operating expenses to operating revenues. Taxes as shown in the next column are the figures as taken from the audited accounts for each year. Under Net Railway Operating Income the amount is also taken from the books of account and arrived at in accordance

with the Interstate Commerce Commission's accounting regulations. The last three columns are self-explanatory.

Q. Now, you have referred specifically to schedule one, which relates to the Atlantic Coast Line?

A. That's right.

Q. Schedule two to Seaboard and schedule three to Florida East Coast, is that right?

A. That's right.

Q. And chedule four is a consolidation for those three railroads as the three principal railroads, is that correct?

A. That is right.

Q. And from these schedules you can determine the rate [fol. 305] of return earned by these railroads over a period of a year, including the year 1948, is that right.

A. That is right.

Q. Now, the schedules 8 to 14 inclusive, designed to show effect on Florida operating ratio of eliminating increases granted by Interstate Commerce Commission on interstate traffic, years 1947 and 1948, are for the same six railroads mentioned in connection with Schedules one to seven. Is that correct?

A. Yes, sir, except that Schedule 11 is a consolidation of the figures for the three principal lines operating in the Florida peninsula, that is, the Coast Line, Seaboard Air Line and Florida East Coast.

Q. Please explain these schedules, please?

A. My explanation will be with respect to Schedule 8 for the Coast Line. On Line 1, Account 101, Freight, Interstate-Florida, for the years 1947 and 1948 are figures taken from annual reports for those years filed with the Railroad and Public Utilities Commission of the State of Florida.

Q. How did you arrive at the Florida proportion of the interstate freight revenue?

A. All revenues intrastate in Florida are allocated 100 per cent to that State. All interstate freight revenue is apportioned to that state on the ratio of the miles hauled in Florida to the miles hauled in other states.

On line two is an amount showing increases allowed by [fol. 306] the Interstate Commerce Commission on interstate traffic which are included in the figures on Line 1. These figures were arrived at on the basis of percentage

increased furnished to me by our Traffic Department. On Line 3 are shown the total Florida operating revenues for the two years as taken from annual reports to the Florida Commission. Item 4 is a restatement of Item 3 after deducting the increases shown on Line 2. Line five shows total Florida operating expenses as also taken from annual reports to the Florida Commission.

Q. How did you arrive at the operating expenses apportioned to the State of Florida?

A. They were prorated to the State of Florida on the basis of revenues apportioned to that State. In other words, the same percentage of operating expenses was allocated to Florida as the percentage of total freight revenue allocated to that state.

Q. Could you ascertain specifically for the State of Florida the actual operating expenses of handling intrastate traffic in that state, sir.

A. No, sir, it has never been found possible to arrive at such a segregation. For instance, it is a practical impossibility to allocate a proper proportion of the value of rail, ballast, ties and other road material to intrastate traffic or to allocate thereto a proper part of the cost of up-keep. It is also a practical impossibility to allocate to intrastate [fol. 307] traffic its proper proportion of the cost of operating trains all of which, both freight and passenger, contain both interstate and intrastate traffic and many of which originate or terminate in other states. Again it is a practical impossibility to separate terminal costs, such as switching, station, platform and clerical costs and also to allocate to intrastate traffic its proper share of the many expenses that are common to both freight and passenger traffic. This has been well recognized in the decision of both the Interstate Commerce Commission and the courts. In connection with the Alabama intrastate case before the Interstate Commerce Commission, Docket 30015, the Commission in its report and order held that no such meticulous showing was necessary.

Line six on Schedule 8 shows the Florida operating ratio, revenues to expenses, on the basis of revenues which include the increase shown on Line 2. For the year 1947 this ratio was 84.17. Line 7 shows the ratio of operating

expenses to operating revenues for the State of Florida as it would have been without the increases shown on Line 2. It can be noted that without the increases there would have been $101.70 of operating expenses for each $100 of operating revenues.

Q. In other words, do I understand that if the Atlantic Coast Line Railroad Company had not been allowed the interstate rate increases which were made effective, its [fol. 308] operating ratio in Florida in 1948 would have been $101.87?

A. That's right.

Q. In other words, it would cost $101 to operate a hundred dollars worth of revenue?

A. That's right.

Q. Schedules 15 to 21, inclusive, designed to show the effect on a system basis on net railway operating income, and net income, eliminating all increases in freight rates granted by the Interstate Commerce Commission and the several State Commission for the years 1947 and 1948, are also with respect to the six carriers previously mentioned. Is that correct?

A. Yes, sir, except that Schedule 18 is a consolidation of the figures for Coast Line, Seaboard Air Line and Florida East Coast, the three principal lines operating in the Florida peninsula.

Q. Please explain these schedules.

A. They are somewhat similar to Schedules 8 to 14 which I have just explained, except that they take notice of increases granted under Ex parte 162 and 166 on both interstate and intrastate business in all the states through which the Coast Line operates. Opoerating revenues and operating expenses, as shown in the first two columns of Schedule 15 are taken from the books of account. This was also true of Railway Tax Accruals, Equipment Rents, Joint [fol. 309] Facility Rents, Net Railway Operating Income and Net Income.

In the last two columns which show the figures restated to eliminate the increases to which I have referred, it can be noted that all operating revenues are the same as in the first two columns except freight revenue. This is fully explained in the footnote at the bottom of the schedule. The difference between freight revenue as stated on books

of account and as restated in the exhibit, is the aggregate amount of increases allowed under Ex Parte 162 and 166. This was calculated on the basis of percentage increases in each State effective during each month of the years 1947 and 1948 as furnished by our Traffic Department. As can be seen on the last line of this exhibit Coast Line had a net income in the year 1948 of $7,684,913, but if it had not had the benefit of increases in freight rates under Ex Parte 162 and 166 it would not have had that. It would have had a net deficit of $20,297,152.

Q. They are, if I understand, taking what the results would have been if the railroad had not gotten the interstate increases and increases granted by the several states; is that it?

A. That's correct.

Q. You have shown similar figures for the Seaboard and the Florida East Coast, have you not?

A. That's right.

[fol. 310] By Exam. Mattingly:

Q. Before you get off the group of schedules, will you look at schedule 15 the operating ratio there in the first column 1947, then look at the operating ratio on the second line from the bottom on 1947, page one.

A. Year 1947?

Q. Yes.

A. Yes, right at the moment it strikes me it ought to be the same. I don't know just what the difference is, but I've got the correct figures. $87.57 is the correct figure.

Q. Then the figure on schedule one should be changed to that, is that right?

A. That's right. You asked me the question as to whether the operating ratio shown on schedule No. 18 should agree?

Comm. Patterson: 15.

A. 15. Yes, I see. That's right. The figure on schedule one ought to be $87.57.

By Mr. Gwathmey:

Q. Now schedules 22 to 28, inclusive, showing separation of Florida freight revenue between that derived from interstate and that derived from intrastate business, years

1936 to 1948, inclusive, are also for the six lines previously mentioned. Is that correct?

A. Yes, sir, except that Schedule 25 is a consolidation of the figures for the three principal lines operating in the Florida peninsu*al*.

Q. Please explain these schedules.

[fol. 311] A. I will explain Schedule 22 for the Coast Line, which will apply to the others containing similar information.

The exhibit merely shows a separation of freight revenue within the state of Florida between that derived from interstate business and that derived from intrastate business with the total of both for each year 1946 to 1948, inclusive, with an average for the five-year period 1936 to 1940, prewar years, and a yearly average for the five years 1941 to 1945, the war years. The last three, of course, are postwar years.

The last two columns at the right show the percentage of revenue earned on the interstate business as compared with that on intrastate business. For the last year shown it can be seen in the last column to the right that 28.0 per cent of all Coast Line freight revenue earned in Florida was earned on intrastate business.

Q. What does your Schedule 29 purport to show?

A. It purports to show that with respect to Seaboard Air Line and Atlantic Coast Line, the two carriers with the greatest mileage in the Florida peninsula, the traffic density for the State of Florida compared with system density and with system density excluding the State of Florida for the years 1938 to 1948, inclusive.

The first three columns to the left show statistics for the system, the next three columns statistics for the State of [fol. 312] Florida, the next column shows percentage of Florida operated miles to system total miles operated. The next column shows percentage of revenue ton miles in the State of Florida to the system total. The next column shows percentage of ton miles per mile of road in the State of Florida to that for the system. The next three columns show system figures, excluding the State of Florida. The last three columns show the percentage of miles operated in Florida to the system, excluding Florida, percentage of revenue ton miles in Florida to the system, excluding Flor-

ida, and percentage of ton miles per mile of road in Florida to the system, excluding Florida.

Looking at figures for the year 1948, the latest year available, it can be seen that the Seaboard has 60.39 per cent of its sy-tem mileage in Florida after excluding Florida and the Coast Line has 52.76 on the same basis.

As shown for the year 1948 in the last column, the ton miles per mile of road for the Seaboard in Florida amounts to only 69.71 per cent as compared with the balance of the system, excluding Florida, and for the Coast Line such percentage is only 62.93.

Q. Schedules 30 and 31 showing operating revenues, expenses and net railway operating income separately for freight and passenger service, years 1936 to 1948, inclusive, were prepared for the Coast Line and Seaboard with a [fol. 313] consolidation of the figures for both roads in Schedule 32. Is that correct?

A. Yes, sir, that's correct.

Q. What is the purpose of these schedules?

A. Merely to indicate the very substantial extent to which deficits from passenger operations have to be absorbed from freight earnings. It can be noted that for the average year 1936 to 1940, the freight operating ratio was 69 while the passenger operating ratio was 114. The average for the five war years shows a freight operating ratio of 65 and a passenger operating ratio of 66. I think it is well known that the tremendous volume of military traffic is largely responsible for the fact that the railroads were able to make any money on passenger traffic during the war.

As can be readily seen from the statement immediately following the close of the war, the passenger operating ratio in 1946 jumped to 96 and as new private automobiles became more and more available to the public, the passenger operating became more and more. It went up in 1947 to 114 and in 1948, the latest year available, it was 127.

Comm. Patterson: Mr. Gwathmey, would this be a good point to recess until two o'clock?

Mr. Gwathmey: Certainly.

(At 12:40 o'clock a recess for lunch was taken until 2:00 p. m. of the same day.)

[fol. 314] Afternoon Session

M. G. Seigler resumed the stand and testified further as follows:

Direct examination (continued):

By Mr. Gwathmey:

Q Schedules 33 and 34 for the Coast Line and the Seaboard Air Line, and Schedule 35 for both of the roads, are statements showing contribution of intrastate revenues to total system freight revenues and Florida percentage of total intrastate freight revenues, years 1936 to 1948, inclusive. What is the significance of these schedules?

A. They point up the importance of revenues from Florida intrastate traffic. For instance, looking at the year 1948 at the bottom of Schedule 33, it can be seen that 13.4 per cent of Coast Line's total system freight revenues comes from intrastate traffic in the several states, and that of the total system intrastate freight revenues 48.1 per cent comes from intrastate freight in the state of Florida. Schedule 34 for the year 1948 shows that for the Seaboard Air Line 60.3 per cent of its total system intrastate freight revenues comes from the State of Florida. Schedule 35 shows that for both roads combined 53.8 per cent of total system intrastate business is in the State of Florida.

Q. In other words, in the case of both roads, the Florida intrastate revenue is very important, is that correct?

[fol. 315] A. That is correct.

Q. Please explain the purpose of Schedules 36, 37 and 38?

A. These schedules point up the tremendous increase in railroad wages between the year 1936 and the year 1948. Looking at Schedule 36 for the Coast Line it can be seen that in the year 1936 the average straight-time hourly rate for all employees was 56.48 cents. Looking at the bottom line it can be seen that by 1948 this had increased to 122.72 cents per hour. The statement shows that the average annual compensation for employees in 1936 was $1,502. In 1948 this had risen to $3,461.

As shown in the last two columns of Schedule 36 for the Coast Line, using 1936 as an index equal to 100, that for

each $1.00 of straight-time paid in 1936, the same amount of time in 1948 cost $2.17.

Due to the fact that over and above straight-time rates employees are paid large sums of overtime, the exhibit shows that for each $1.00 paid in 1936 for total compensation, the same time in 1948 costs $2.30.

The figures in Schedule 37 for the Seaboard Air Line are substantially the same as those for the Coast Line and the figures in Schedule 38 are merely a consolidation of the figures in Schedules 36 and 37.

Q. What have you to say about Schedules 39, 40 and 41?

A. These are merely to point up the tremendous increase [fol. 316] in Federal payroll taxes since 1937. As can be seen from Schedule 39 for Coast Line, using 1937 as an index of 100, payroll taxes had increased in 1948 to $3.38 for each $1.00 in 1937. As can be seen from Schedule 39 for Coast Line, stating it another way, the average payroll taxes per employee in 1937 amounted to $73.39 and in 1948 the average payroll taxes per employee was $194.94, an index of 266 as compared to an index of 100 for the year 1937.

Attention is directed to the fact that in 1947, total payroll taxes amounted to $4.70 for each $1.00 of such taxes in 1937 and the average payroll taxes per employee in 1947 amounted to $3.40 for each $1.00 in the year 1937.

The reduction in 1948 was brought about by a reduction in the tax rate for unemployment insurance from 3 per cent to one-half of one percent. It is my understanding that this reduction was made for the reason that the balance in the fund for unemployment insurance as administered by the Railroad Retirement Board had become several hundred million dollars in excess of current needs.

Q. Please explain the purpose of Schedules 43, 42 and 44.

A. The purpose of these schedules is to show the effect for the first four months of 1949, as compared with the first four months of 1948, of a seven cents wage award granted to non-operating employees effective October 1, 1948. Such increase was not in the 1948 figures but they are in the 1949 [fol. 317] figures. I might mention at this point that none of these figures purport to show in any respect the cost to the railroads of placing non-operating employees on a five-day w ek effective September 1, 1949.

Looking at Schedule 42, it can be seen that net operating income for the first four months of 1949 was $287,034, less than the same period of 1948, or a decrease of 6.2 per cent. Net income for the first four months of 1949 was $625,816 less than for the first four months of 1938, a decrease of 10.8 per cent.

The information in Schedule 43 shows that for the Seaboard between the two periods mentioned, net railway operating income decreased 12.2 per cent and net income decreased 26.9 per cent.

Schedule 44 is merely a consolidation of Schedules 43 and 42.

Q. Now, Mr. Seigler, in your consolidated statement, exhibit No. 1, you have now particularly referred to the schedule related to the three principal Florida railroads, the Coast Line, Seaboard and Florida East Coast. You have also shown separately for certain other railroads individually such as the Frisco, Louisville & Nashville and so forth. I want to know first, how many miles of railroad does the Frisco operate in Florida and where are the lines located?

A. The Frisco operated 47 and a fraction. I don't have [fol. 318] the fraction. Forty-eight miles from Alabama line into Pensacola.

Q. How many miles of road does the Louisville and Nashville operate and where is that located?

A. 243 miles. It comes into Florida from Florala, Alabama, to Pensacola and runs east from Pensacola to Chattahoochee. It also has a branch between Florala, Alabama, and Crestview, Florida. Also a few miles on a branch line between Geneva, Alabama and Graceville, Florida.

Q. How many miles of road does the Georgia Southern and Florida Railway have in Florida and where is its line located?

A. That is 157 miles and that line branches out from Valdosta, Georgia, I believe it is, and one line runs from Valdosta to Jacksonville. The other, from Valdosta to Palatka.

Q. Now, you might state also what the mileage of the Florida East Coast is in Florida?

A. 575 miles, made up mostly of its main line between Jacksonville and Miami.

Mr. Gwathmey: Will you indulge me to speak to the witness a moment?

Comm. Patterson: All right.

Mr. Gwathmey: Off the record.

Comm. Patterson: Off the record.

(Off the record.)

Comm. Patterson: On the record.

[fol. 319] By Mr. Gwathmey:

Q. Mr. Seigler, in your exhibit No. 1 you have shown the rate of return of the Florida railroads over a period of years. I will ask you if you now have a statement which will show similar information for the railroads in the southern region and excluding the Atlantic Coast Line, Seaboard Air Line and Florida East Coast, for the southern region as a while?

A. Yes, I have.

Q. You do have that?

A. Yes, sir.

Mr. Gwathmey: May we have that marked for identification, Mr. Commissioner?

Comm. Patterson: Let's identify it as Exhibit No. 2.

(Respondent's Exhibit No. 2, Witness Seigler, marked for identification.)

By Mr. Gwathmey:

Q. Mr. Seigler, by comparing the figures on your exhibit No. 2 with the data shown in your exhibit No. 1, does it or does it not indicate that the three principal railroads operating in Florida are more greatly in need of revenue than the southern region carriers, generally speaking?

A. Yes, it does. Specifically, looking at the year 1948, the rate of return on total investment less depreciation for the three principal Florida lines was 2.91. And for the southern region as a whole, exclusive of those three lines, [fol. 320] the return was 4.97.

Q. Have you also a statement showing net railway operating income for the southern region, exclusive of the Atlantic Coast Line and Seaboard Air Line and Florida East

Coast Railway and as compared with those three lines, Four months 1949 compared with four months 1948?

A. I have.

Mr. Gwathmey: May we have this numbered please? Number three, is it?

Comm. Patterson: That's right. Exhibit 3.

(Respondent's Exhibit No. 3, Witness Seigler marked for identification.)

By Mr. Gwathmey:

Q. What does this exhibit show, Mr. Seigler?

A. It shows that the first four months of 1949 of net railway operating income for the southern region as a whole, excluding the Coast Line, Seaboard and Florida East Coast, had a decrease of 7.6 per cent. The three Florida lines for the same period had a decrease of ten percent. In net income for the region as a whole, the decrease was 5.4 per cent and for the three Florida lines the decrease was 17.4 per cent.

Q. In other words, although for this latest period, earnings for the southern carriers generally have declined; earnings of the three Florida roads have declined more rapidly than the others, isn't that right?

A. That's correct.

[fol. 321] Mr. Gwathmey: Mr. Commissioner, we will now offer in evidence the exhibits that have been identified as Numbers 1, 2 and 3 and ask they be received.

Comm. Patterson: If there are no objections, they will be received for the record.

Mr. Petteway: I want to object, Mr. Commissioner. The Florida Commission objects to receiving exhibits schedules 1 to 7 of the exhibit 1 for the following reasons: These exhibits do not contain any segregation of the property investment, between interstate and intrastate operations. That is the first ground.

Second, that these first seven schedules having to do with property investment and rate of return are predicated on the theory that the freight revenues must carry the passenger deficits and that in our opinion is contrary to the law as recognized by the United States Supreme Court and

which so far as we have been able to find, has never been changed and likewise the Supreme Court of the United States has said that in the case of Northern Pacific Railroad Company vs. North Dakota that where the question is as to the profitableness of the intrastate business as a whole under a general scheme of rates, the carrier must satisfactorily prove a fair value of the property employed in its intrastate business and show that it has been denied a fair return on that value.

[fol. 323] There has been no effort here to do that. All of this is predicated on the interstate investment. As a matter of fact, on the entire investment, with no segregation.

We object to receiving schedules one to seven on those grounds and eight to fifteen on the ground that they are wholly immaterial and irrelevant to the issues in this case. They have to do only with the effect on interstate operations of the actions of the Interstate Commerce Commission in awarding certain increases. They do not show anything with reference to intrastate operations in Florida.

Comm. Patterson: The motion is overruled.

Mr. Petteway: It is not necessary to note exceptions, is it Mr. Commissioner?

Comm. Patterson: No, sir. Proceed, Mr. Gwathmey.

(Respondent's Exhibits 1 through 3, inclusive, Witness Seigler, received in evidence.)

Mr. Gwathmey: The witness is available for cross examination.

Cross-examination.

By Mr. Petteway:

Q. Mr. Seigler, if you will turn to schedule one in your exhibit one. Am I correct in understanding that the figures shown in Column two of the schedule one are the balances in the investment accounts at the close of the year shown?

A. The figures in the second column are the balances at [fol. 323] the close of the year in the investment account, plus cash and material and supplies less depreciation.

Q. That is the balance as of the end of the year?

A. That is correct.

Q. Column two is not less depreciation; that is column three?

A. Oh, yes, if you count the year as the first column. You are right.

Q. Now, why did you take the balances of those accounts at the close of the year rather than the averages during the year?

A. Well, for no particular reason except that it has always been customary to take the closing figure at the end of the year.

Q. Do you have the averages for the years shown?

A. No.

Q. You do not?

A. No, I don't.

Q. Now, in arriving at those totals, how much did you include for cash and materials and supplies? For example, for the year 1948 on schedule No. 1?

A. I could give you that with respect to the Coast Line.

Q. Well, these are all your exhibits, aren't they, Mr. Seigler?

A. Yes, but as I testified, they were turned over to me by the other railroads.

[fol. 324] Exam. Mattingly: He just asked you about Exhibit No. 1.

Comm. Patterson: That is limited to the Coast Line.

A. Your question was how much was included?

By Mr. Petteway:

Q. How much was included for cash and how much for materials and supplies.

A. Cash, 14,610,164 dollars.

Q. Materials and supplies?

A. $17,416,639.

Q. Now were those balances at the end of the year also?

A. That's right.

Q. Now you are not in position, I believe you said, to give the same for us with reference to schedules 2 though 7?

A. That is correct. The other lines have accounting witnesses here. They possibly can supply it, if you want it.